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Supreme Court of the United States

OCTOBER TERM, 1964

No. 138

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES, PETITIONER,

vs.

ASSOCIATION FOR THE BENEFIT OF NON-CONTRACT EMPLOYEES.

No. 369

NATIONAL MEDIATION BOARD, ET AL., PETITIONERS,

vs.

ASSOCIATION FOR THE BENEFIT OF NON-CONTRACT EMPLOYEES.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 138 PETITION FOR CERTIORARI FILED JUNE 1, 1964
NO. 369 PETITION FOR CERTIORARI FILED AUGUST 10, 1964
CERTIORARI GRANTED OCTOBER 12, 1964

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IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,068

NATIONAL MEDIATION BOARD; FRANCIS A. O'NEILL, JR., Individually and as Chairman of the National Mediation Board; LEVERETT EDWARDS, Individually and as Member of the National Mediation Board; and HOWARD G. GAMSER, Individually and as Member of the National Mediation Board, *Appellants*

v.

ASSOCIATION FOR THE BENEFIT OF NON-CONTRACT EMPLOYEES, *Appellee*

No. 18,072

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES, *Appellants*

v.

ASSOCIATION FOR THE BENEFIT OF NON-CONTRACT EMPLOYEES, *Appellee*

On Appeal from the United States District Court for the District of Columbia

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CONSOLIDATED JOINT APPENDIX

Relevant Docket Entries

1963

Apr. 13—Complaint, appearance Exhibits A thru C

Apr. 13—Summons, copies (6) and copies (5) of Complaint issued.

Apr. 13—Motion for Preliminary Injunction.

Apr. 13—Affidavit of James F. Sheahan.

Apr. 18—Motion of pltff. for temporary restraining order.

Apr. 18—Temporary Restraining Order, $100.00 undertaking; motion for preliminary injunction set for April 24, 1963; Issued at 2:27 P.M.

Apr. 22—Opposition of defts to pltffs motion for preliminary injunction; memorandum; affidavit; exhibits 1 thru 22, 24 thru 28.

Apr. 24—Motion for preliminary injunction argued & submitted; temporary restraining order continued to 10:00 A.M., April 25, 1963.

Apr. 25—Exhibit by pltff, numbered 23.

Apr. 24—Order extending temporary restraining order to 10:00 A.M. on April 25, 1963 & thereafter until the Court files its order. All ser. 4-24; Atty. Gen. ser. 4-26; US Atty. ser. 4-24—Youngdahl, J.

May 3—Exhibit (notice of election).

May 3—Findings of Fact, conclusions of Law; order granting motion for preliminary injunction, deft to have one week to show cause why injunction should not be made permanent, & remanding to the Board the request of pltff for hearing relating to appropriateness of class or craft; & memorandum. (N)

1963

May 8—Motion of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Stations Employees for leave to intervene as party deft;

May 10—Opposition of pltff to applicant's motion to intervene;

May 10—Response of defts to order to show cause.

May 10—Motion of defts to dismiss or in the alternative, for summary judgment; affidavit; P & A; statement of material facts;

May 10—Order amending memorandum of Court by deleting sentence therefrom. (N)

May 13—Reply of Brotherhood of Railway & Steamship Clerks Freight Handlers, Express & Stations Employees to pltff's memo in opposition to motion for leave to intervene as deft;

May 22—Reply to pltff to motion to dismiss, etc & response to order to show cause;

May 29—Order denying motions of deft. #1 to reconsider or vacate preliminary injunction or to dismiss or for summary judgment; making final the preliminary injunction granted 5-3-63; remand to deft. #1 the request of pltf. for hearing.

May 29—Order permitting Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express & Station Employees to intervene as deft. (N)

May 29—Memorandum readopting & supplementing the memorandum of May 3, 1963.

July 16—Notice of Appeal of intervenor deft.;

July 26—Notice of appeal of deft 2, 3, & 4.

Aug. 23—Record delivered to USCA.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 973-'63

ASSOCIATION FOR THE BENEFIT OF NON-CONTRACT EMPLOYEES, *Plaintiff*,

vs.

NATIONAL MEDIATION BOARD, LEVERETT EDWARDS, Individually, and as Chairman of the National Mediation Board, FRANCIS A. O'NEILL, JR., individually and as a member of the National Mediation Board, and HOWARD G. GAMSER, individually and as a member of the National Mediation Board, *Defendants*.

Complaint

Plaintiff, Association for the Benefit of Non-Contract Employees, complains of the defendants as follows:

I

Plaintiff is a non-profit corporation organized and existing under the laws of the State of California. Membership is composed of personal service and clerical employees of United Air Lines, a common air carrier; said members are employed in the several States of the Union wherein United Air Lines maintains offices.

II

The defendants, LEVERETT EDWARDS, FRANCIS A. O'NEILL, JR. and HOWARD G. GAMSER are members of the National Mediation Board (the "Board"), appointed thereto by the President of the United States. The defendant, National Mediation Board, is an agency established under the Railway Labor Act (the "Act"). 45 USC, § 151 et seq. All defendants are located in the District of Columbia.

III

The action arises under the Constitution of the United States and the Railway Labor Act. Plaintiff seeks to enjoin defendants from conducting a representation election within a certain designated "craft or class" of employees of United Air Lines, among which plaintiff's members have been included; and to enjoin defendants from certifying any representative for such craft and class until the Board grants a public hearing allowing plaintiff to be heard with respect to appropriateness of the class and craft designated. Plaintiff further seeks to enjoin defendants from conducting any election wherein the form of the ballot ordered and used by defendants does not afford plaintiff's members the right to vote for or against representation.

Plaintiff's members are employed by United Air Lines under individual bargaining agreements. Plaintiff's members desire the opportunity to vote as to whether such individual bargaining agreements may be retained by them.

The matter in controversy exceeds the sum of Ten Thousand ($10,000.00) Dollars, exclusive of interest and costs. Federal jurisdiction is based on 28 USC, §§ 1331 and 1337.

IV

The Act applies to both air and rail carriers; in substance it provides that carrier employees shall have the right to organize and bargain collectively through representatives of their own choosing; that no carrier or agent thereof shall require its employees to sign any agreement promising to join or not to join a labor organization; and, that the majority of employees of any craft or class shall have the right to determine who their representative shall be. (45 USC, § 152, Fourth and Fifth). It further authorizes the Board in the event of a representation dispute to in-

vestigate upon the request of a party to the dispute, and to certify individuals or organizations to represent the class or craft of employees involved. (45 USC, § 152 Ninth).

V

On or about August 24, 1962, the Brotherhood of Railway and Steamship Clerks, Frieght Handlers, Express and Station Employees (the "Brotherhood"), a labor organization proceeding under USC 45, § 152, Ninth, requested the Board to investigate a represenation dispute concerning employees of United Air Lines described as clerical, office, stores, fleet and passenger service employees. The other party to the dispute was the International Association of Machinists (the "IAM"). The Board took jurisdiction and docketed it as case R-3590, recognizing the Brotherhood and the IAM as parties in interest.

VI

The class or craft involved in the dispute consists of approximately 12,300 employees of United Air Lines. 6,400 members of the plaintiff are included in this class or craft primarily in clerical and passenger service categories.

VII

The employees of United Air Lines, in November, 1962, were informed that the Board proposed to call an election for a bargaining representative of the above class or craft of employees. Thereafter, plaintiff, a non-profit corporation, was organized and formed to petition the Board. On February 13, 1963, plaintiff petitioned the Board for a public hearing to: (1) Divide the craft or class into three units, passenger service, clerical, ramps and stores. (2) In the event of a denial, to provide a ballot upon which plaintiff's members would have an opportunity to vote for or against representation.

VIII

The Board on March 27, 1963, denied said petition. Copies of plaintiff's petition and the Board's decision are attached hereto as Exhibits "A" and "B" respectively and expressly made a part hereof. Plaintiff on April 5, 1963, filed a request for re-consideration of the decision. The Petition for Re-Consideration is attached hereto as Exhibit "C", and expressly made a part hereof. The plaintiff's Petition for Re-Consideration was denied by the Board on April 12, 1963.

IX

The craft or class concerned was designated by the Board some 15 years ago in docket R-1706. It is made up of diverse and unrelated classifications, such as baggage handlers, accountants, stenographers, passenger agents and electronic computer technicians. The members of these classifications have different working conditions and relations with United Air Lines. This combination creates a craft or class for which a single bargaining agent cannot fairly and adequately represent the diverse interests of all concerned. Plaintiff's members seek the opportunity to preserve individual bargaining agreements by voting for or against represenation.

X

The Board set forth three grounds upon which it made its decision denying plaintiff's petition. One, that plaintiff was not authorized to appear before the Board for collective bargaining. Two, that plaintiff did not seek to be on the ballot. And three, that plaintiff did not intend to bargain collectively. This decision is arbitrary, capricious and discriminatory, and exceeds the jurisdiction of the Board in that it denies to plaintiff's members the right to express themselves as either for or against representation and continues them in a craft or class in which a single

bargaining agent cannot fairly represent their rights. The procedure of the Board wherein an opportunity is denied to a majority of the class or craft to vote for or against representation and fails to advise them of that right, deprives the plaintiff of its right to due process under the Fifth Amendment to the Constitution of the United States.

XI

The Board's decision that plaintiff is not entitled to a hearing on the ground that it did not seek or intend to bargain collectively violates the Due Process clause of the Fifth Amendment to the Constitution in that it is a deprivation of bargaining rights, in that it denies the correlative rights to bargain or not to bargain and is arbitrary, capricious and discriminatory and is outside the powers of the Board.

XII

The Board has scheduled an election for this craft and class on April 22, 1963. In providing a ballot for such election, the Board has stated that it will use a ballot form on which no space or section is provided within which a voter can vote no. This form of ballot will afford only the opportunity to vote for the Brotherhood, the IAM, or a write-in representative. For the reasons set forth herein this action is arbitrary, capricious and discriminatory and in excess of the powers of the Board, in that it deprives plaintiff's members of their bargaining rights under the Act.

XIII

There is no statutory procedure for review of the Board's procedures, if the Board refuses to recognize plaintiff; if the Board refuses to conduct a hearing as to the composition of the craft or class; holds an election; and, refuses to provide a ballot form which permits a vote for or against

representation, plaintiff's members will be without adequate remedy at law with which to seek a review of the Board's unlawful acts or to assert their constitutional rights to due process. Unless restrained the Board will conduct such an election and plaintiff's members will suffer irreparable injury and damage to their rights and property.

WHEREFORE, plaintiff prays as follows:

1. For a preliminary injunction to be made premanent after a final hearing.

(a) Restraining defendants from conducting any election in the class or craft referred to herein, among the employees of United Air Lines under National Mediation Board number R-3590 or any other number, unless the Board shall: 1. Conduct a hearing relative to the appropriateness of the class or craft designated; 2. Afford plaintiff status as a party in interest at said hearing; and 3. Offer a ballot upon which voting employees can vote for or against representation.

2. For whatever further relief the Court may deem meet and proper in the premises.

DATED: April 12, 1963

ASSOCIATION FOR THE BENEFIT OF NON-CONTRACT EMPLOYEES

By

/s/ _____

JAMES F. SHEAHAN, *President*

ARGUELLO. GIOMETTI. MCCARTHY

By

ALEX L. ARGUELLO

Attorneys for Plaintiff

STATE OF CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO } ss

JAMES F. SHEAHAN, being first duly sworn, deposes and says:

That he is the President of the Association for the Benefit of Non-Contract Employees, a California corporation, the above named plaintiff, and is authorized to make this verification for and on behalf of said corporation; that he has read the foregoing Complaint and knows the contents thereof; that the same is true of his own knowledge, except as to those matters which are therein stated on his information or belief, and as to those matters he believes it to be true.

ASSOCIATION FOR THE BENEFIT OF
NON-CONTRACT EMPLOYEES

By

/s/ _____

JAMES F. SHEAHAN, *President*

Subscribed and sworn to before me
this 12th day of April, 1963.

MARVIN G. GIOMETTI
Notary Public

In and for the City and County of
San Francisco, California.
(Commission Expires: 4/26/63)

Exhibit "A"

February 11, 1963

MR. LEVERETT EDWARDS, *Chairman*
National Mediation Board
Washington 25, D. C.

Re: Case R-3590
Association For The Benefit of
Non-Contract Employees

Dear Sir:

We submit herewith on behalf of the Association For The Benefit of Non-Contract Employees and the five undersigned individuals a Petition For Relief before the National Mediation Board as follows:

1. The petitioners herein and the Association For The Benefit of Non-Contract Employees, as of this date, represent 5100 employees, in the Customer Contact and Office and Clerical group, of United Air Lines. This representation is evidenced by signed representation cards from each of said employees.

2. The petitioners hereby apply for leave to intervene in National Mediation Board Representation Case R-3590, as a party in interest on behalf of the 5100 employees who have appointed the petitioners. In addition to being granted permission to intervene, the undersigned do further request the following specific action from the National Mediation Board.

(a) That the pending election in case R-3590 be deferred until there be a re-determination of the class or craft of employees to be involved in the election.

(b) That the National Mediation Board, basing its action on information already before it, make a re-deter-

mination of the employees presently in the bargaining unit into three groups compromised [sic] of:

1. Office and clerical employees.

2. Customer contact employees.

3. Ramp and stores employees.

each of which should be determined to be a separate class or craft for purposes of this representation case, and for future representation proceedings involving these employees.

(c) In the event that insufficient facts are presently on file or if the Board declines to re-determine the class and crafts on its own motion, the undersigned hereby petition the National Mediation Board to fix a time and place for a hearing, at which petitioners and all interested parties and persons may present evidence, argument and authorities bearing on that issue; and that on the evidence thus presented, the National Mediation Board re-determine the class and craft as requested.

(d) In addition to the foregoing and notwithstanding the ultimate determination of class and craft of the National Mediation Board in Case R-3590 petitioners hereby request the National Mediation Board to prepare and use in this representation election, a form of ballot which provides on its face, a place for employees to vote affirmatively that there be no bargaining agent elected to represent their class or craft. This request is based on National Mediation Board practice of using ballots which provide the voter only the opportunity of choosing between bargaining agents.

(e) In the event that the National Mediation Board declines to use a ballot as requested, (i.e. a ballot providing a place for a "no-union" vote), then petitioners request the Board to issue a statement to petitioners, in advance of the

election, explaining how a voter may register as his choice that no union be certified to represent him.

3. The request for re-determination of the class and craft is based upon numerous reasons, including the following, each of which will be proved by petitioners with appropriate evidence and authority in the event of a hearing. (1) The class and craft heretofore established by the National Mediation Board for this election includes approximately 12,500 employees of United Air Lines in widely different job categories. There is no history of collective bargaining common to these diverse groups. In fact, one group (ramps and stores) is presently unionized, while the others (customer contact and office and clerical) have never been unionized in the system. (2) Determination of customer contact and office and clerical employees to be separate classes and crafts is easily accomplished because they are readily identifiable units under both company personnel procedures and nature of work performed. (3) The National Mediation Board determination in R-1706, January 31, 1947 was prior to the significant post war operational developments of the airlines industries. These developments show that office and clerical, ramp and stores employees and customer contact employees are separate classes and crafts and should be treated as such. (4) The employees in these classes and crafts do not desire to be joined in one bargaining unit. (5) There is widely different job-training in the different job categories. (6) The nature of their work is significantly different. (7) There is no aspect of interchangability of personnel between the different job classifications. (8) Vital interests of each category prevents fair representation of all three groups by one bargaining agent without a serious conflict of interest or a potential conflict of interest.

Copies of this petition are being sent to the Brotherhood of Railway Clerks, International Association of Machinists and United Air Lines. It is requested that all communica-

tions regarding this petition be sent to the undersigned in care of the Association For the Benefit of Non-Contract Employees, 244 Kearny Street, San Francisco, California.

Respectfully submitted,

ASSOCIATION FOR THE BENEFIT OF NON-CONTRACT EMPLOYEES

By _____

President

Exhibit "B"

NATIONAL MEDIATION BOARD
WASHINGTON

March 27, 1963
Case R-3590

Mr. James F. Sheahan, President
Association for the Benefit of
Non-Contract Employees
244 Kearny Street
San Francisco, California

Dear Mr. Sheahan:

Reference is made to our letter of March 8, 1963, making formal acknowledgment of communication dated February 11, 1963, signed by yourself and several others on behalf of the Association for the Benefit of Non-Contract Employees. Your communication, referred to above apparently constitutes a petition for action by the National Mediation Board on various subjects. The communication has been considered by the Board in executive session.

In paragraph 2 of said communication, the petitioners apply for leave to intervene in Case No. R-3590 as a party

at interest on behalf of 5,400 employees. This number was subsequently amended to 6,400 by Attroney Alex L. Arguello's letter dated March 8, 1963. The petition requests the following specific actions by the Board:

1. Defer the pending election in Case R-3590 until there be a redetermination of the class or craft of employees involved in the election.

2. Make a redetermination of the employees presently involved into three groups composed of:

   (a) office and clerical employees

   (b) customer contact employees

   (c) ramp and stores employees

   each to be determined as a separate craft or class for the purposes of this representation case and for future representation proceedings involving these employees; and,

3. In the event that insufficient facts are presently on file, or if the Board declines to redetermine the class or craft on its own motion, the petitioners request the Board to fix a time and place for a hearing at which the petitioners and all parties at interest may present evidence, argument and authorities bearing on that issue, and on the evidence thus presented, the Board redetermine the class or craft as requested;

4. Prepare and use in this representation election a form of ballot which provides, on its face, a place for employees to vote affirmatively that there be no bargaining agent elected to represent their class or craft; and,

5. In the event the Board declines to use a ballot as requested (i.e. a ballot providing a place for a "no-union" vote), then the petitioners request the Board

to issue a statement to petitioners in advance of the election explaining how a voter may register his choice that no union be certified to represent him.

The National Mediation Board has given full consideration to all the points raised in your petition, and has concluded that each and all of the requests made in your petition, as enumerated above, should be, and are hereby denied for the following reasons:

The Association for the Benefit of Non-Contract Employees, in this petition, does not ask leave to intervene in this representation dispute as a party to that dispute, as described in Rule 1206.5 of the Board's Rules, which appears in the Code of Federal Regulations, Title 29, Chapter X. An intervenor, as described in Rule 1206.5, is construed to mean an organization or individual which presents to the Board proved authorizations from at least 35% of the craft or class involved, which on their face authorize such organization or individual to represent the employees concerned for the purposes of collective bargaining under the Railway Labor Act. Also, the purpose of intervention, under Rule 1206.5, is to "warrant placing the name of the intervenor on the ballot."

The "authorization" cards submitted on behalf of ABNE contain the following language:

"I hereby authorize the hereinafter named persons to act in my behalf as incorporators and directors for the purpose of forming and directing the affairs of a corporation to be known as an 'Association for the Benefit of Non-Contract Employees' of which I shall be a member.

"These same individuals are hereby authorized and empowered to represent me before the National Mediation Board.

"The execution of this instrument revokes any authorizations heretofore made for the appointment of a representative."

This language does not authorize the ABNE to represent the signatory for the purposes of collective bargaining under the Railway Labor Act, and the cards, therefore, cannot be recognized by this Board as "authorizations", as mentioned in Rule 1206.5, for the purposes of a proceeding under Section 2, Ninth, of the Railway Labor Act.

In addition, the Board has taken note of the statements made in the postscript to a letter of February 23, 1963, which you published, namely, "(1) We are not seeking recognition as a bargaining agent; we do not want our name on the ballot"; and "(4) Our Association will be dissolved after such time as it has served its purpose." It is obvious from these statements that the ABNE does not hold itself out as a representative for the purposes of collective bargaining under the Railway Labor Act, and accordingly, the Association cannot be considered by the National Mediation Board as a bona fide intervenor in Case No. R-3590.

Section 2, Ninth, of the Railway Labor Act provides for certain actions by the National Mediation Board to resolve disputes among a carrier's employees "as to who are the representatives of such employees designated and authorized in accordance with the requirements of this Act. . . ." This language implies contests between "parties" for the right to represent the employees involved in the dispute. By your own statements, you have disavowed any intention of the ABNE to bargain collectively for the employees concerned. Under the provisions of the Railway Labor Act, therefore, the Board is unable to recognize the Association as a proper "party at interest" in Case No. R-3590.

Lacking that essential qualification, the petition from the Association for the Benefit of Non-Contract Employees is hereby dismissed.

By direction of the NATIONAL MEDIATION BOARD.

/s/ E. C. THOMPSON
E. C. Thompson
Executive Secretary

cc: Harrison, Hayes, Mason, Arguello

Exhibit "C"

April 3, 1963

MR. LEVERETT EDWARDS, Chairman
National Mediation Board
Washington 25, D. C.

Re: Case R - 3590
Association For the Benefit of
Non-Contract Employees

Dear Sir:

This letter is in reply to the decision of March 27, 1963, wherein the National Mediation Board denied the petition of the Association for the Benefit of Non-Contract Employees theretofore submitted on February 11, 1963.

Request is made herewith that the Board reconsider its denial made as above stated and review once again the various points and requests made in that petition and in this letter.

As of March 8, 1963, the Association for the Benefit of Non-Contract Employees represented 6,400 of the employees in the class or craft with which this case is concerned. Since that time additional members of the class or craft have allied themselves with the Association for

the Benefit of Non-Contract Employees. The petitioner represents a majority of the bargaining unit with which the Board intends to deal. The Board's denial is based upon the ground that the Association for the Benefit of Non-Contract employees does not wish to act as a representative for the purpose of collective bargaining under the Railway Labor Act. In this regard, it is respectfully called to the attention of the Board that the term and right "collective bargaining" must necessarily contain in it the right to act or not to act. In this instance and at this time, the Association for the Benefit of Non-Contract Employees has petitioned the Board depending on that co-relative right not to act.

It is difficult to realize how the Board on any ground, however technical, can refuse to hear from the representative of the majority of a class or craft.. If the Board fails to reconsider its position, any action taken with respect to this dispute will create the anamolous situation in which the very employees which the National Mediation Board is charged to protect are being wrongfully discriminated against.

The Board's decision has effectively limited the right of these employees to be heard, even through the medium of the election now being arranged by the Board. Without regard to the technical status of the petitioning parties the Board is now sufficiently advised with respect to the will of a large number of employees in the group that a "no vote" should appear on the ballot, so as to permit this large group to express themselves even though without the status demanded by the Board. Previous action on the part of the National Labor Relations Board has established precedent wherein a "no vote" has appeared on the election ballot. Without regard to the action taken with reference to the Association for the Benefit of Non-Contract Employees petition, the Board can still, on its own motion, take this action with respect to the election

ballot and thus provide a fair and non-discriminatory atmosphere in which the forthcoming election can be conducted.

It should be further noted that prior to the submission of the petition on behalf of the Association for the Benefit of Non-Contract Employees, representatives of the employee group traveled to Washington, D. C. and met in a body with Mr. E. C. Thompson, Executive Secretary of the National Mediation Board. At that time a copy of the authorization card was shown to Mr. Thompson and his comments thereon were elicited. While it is recognized that Mr. Thompson's action did not constitute an official act of the Board, the representatives of the Association for the Benefit of Non-Contract Employees were at that time advised by Mr. Thompson that the language of the cards was sufficient to evidence the act of the individual employees in authorizing the Association for the Benefit of Non-Contract Employees to act on their behalf.

The Association for the Benefit of Non-Contract Employees, as is known to the Board, is a new association, formed quickly, to meet the demands of the situation created by the Brotherhood of Railway Clerks, and the announced intention of the Board to hold an election wherein this group of employees is to be afforded an opportunity to vote for one union or another. This alternative does not meet with the approval of these employees, and this association manifests its intention to avoid that choice. The expedient of destroying a ballot of the National Mediation Board, or otherwise disposing of it, does not appear to the Association of Non-Contract Employees to faithfully reflect the democratic process. The Association for the Benefit of Non-Contract Employees therefore sought and seeks the opportunity to record its "no vote" on the ballot circulated by the Board which represents the United States in this dispute. No official action of the Board of Directors of the Association for the Benefit of Non-Con-

tract Employees has authorized the Association or any of its representatives to refuse to collectively bargain with United Air Lines. On the contrary, the Association for the Benefit of Non-Contract Employees does seek status as the bargaining agent for this class or craft. The majority employee group represented by the Association for the Benefit of Non-Contract Employees in this regard desires no union representation. The Association for the Benefit of Non-Contract Employee's bargaining position must therefore be against union representation. The only manner in which this bargaining position can be maintained is by the expedient of obtaining a "no vote" on the ballot. The Association for the Benefit of Non-Contract Employees again respectfully urges that the interest of this majority group is in equity and in the light of the fundamental and traditional rights of the workers one which should not be ignored.

While the Association for the Benefit of Non-Contract Employees does not seek to evoke its right to union representation, it seeks an equally important right, the freedom from union representation, which is an inherent right granted to employees in all American labor concepts.

The Association for the Benefit of Non-Contract Employees does not in any sense by this petition waive any of the other points propounded in its original petition, and in this light repeats the request that the class or craft established by the National Mediation Board some 15 years ago is in the light of intervening developments in changes in the industry so heterogeneous and diverse as to group together such widely disparate occupations within the airline as to create an unwiedly and dissonant division of employees. This inappropriate grouping can do nothing more than create further problems and difficulties for both the Company and the employees concerned. It is our contention that the Board already has sufficient information before it upon which it can make a redetermination of the

class or craft, whether or not the petition of the Association for the Benefit of Non-Contract Employees is granted. This action should be taken. It is further our contention that if the Board does not feel that it has sufficient information before it, more than adequate reasons now exist for the calling of an open hearing so that these facts may be elicited.

The petitioner herewith requests that the National Mediation Board review its prior findings and denial of the petition of the Association for the Benefit of Non-Contract Employees and reverse its findings heretofore entered so that the Association for the Benefit of Non-Contract Employees, the representative of the majority of the employees in the class or craft with which the Board now intends to deal, be recognized and heard.

Respectfully submitted,

/s/ RALPH C. JOHNSON

ASSOCIATION FOR THE BENEFIT OF
NON-CONTRACT EMPLOYEES

By .....
President

Motion for Preliminary Injunction

COMES NOW, Association for the Benefit of Non-Contract Employees, plaintiff herein, by its attorneys, and moves this Court to enter a preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure, and in support thereof states:

1. Plaintiff's verified Complaint for injunction and other relief was filed herein on April 13, 1963.

2. As stated in the Affidavit of James F. Sheahan, President, filed herewith and said verified Complaint, defendants intend to hold an election among a certain group of

employees of United Air Lines before trial can be had. That said election is in violation of the statutory and constitutional rights of plaintiff's members and will irreparably damage them.

3. Plaintiff has filed herein on April 13, 1963, a Memorandum of Points and Authorities in support of this motion.

WHEREFORE, plaintiff moves the Court to enter a preliminary injunction:

(a) Restraining defendants from conducting any election under National Mediation Board case number R-3590 or certifying any representative of said employees, pursuant to said case or any other proceeding before the National Mediation Board without first conducting a hearing and permitting plaintiff to be heard as a party in interest relating to the question of the appropriateness of class or craft of employees among whom such election is to be held.

(b) Restraining defendants from conducting any election among said employees in which the form of the ballot does not permit a voting employee to cast a vote for or against representation.

Pursuant to Rule 9(b) of the Rules of this Court, plaintiff requests an order for hearing on this motion.

ARGUELLO. GIOMETTI. MCCARTHY

By ALEX L. ARGUELLO

Affidavit of James F. Sheahan

CITY AND COUNTY OF SAN FRANCISCO }
STATE OF CALIFORNIA } ss.

JAMES F. SHEAHAN, being first duly sworn, says:

That he is President of the Association for the Benefit of Non-Contract Employees, a non-profit corporation comprised of 6,400 employees of United Air Lines, said employees serving in a class or craft designated by the National Mediation Board to include "clerical, office, stores, fleet and passenger service". The total group numbers about 12,300 employees.

The Association for the Benefit of Non-Contract Employees was formed to represent the interests of its employee-members before the National Mediation Board in a dispute involving the class or craft mentioned. The dispute, of which the National Mediation Board has taken cognizance under its docket number R-3590, concerns the desire of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees ("the Brotherhood") and the International Association of Machinists ("the IAM") individually to become the bargaining representative for this entire class or craft.

Up to this time, the IAM has represented the ramps and stores employees. The passenger service and clerical employees have had no union representation. This group of employees working under individual bargaining agreements with United Air Lines.

On January 28, 1963, with certain other representatives (28 in number) of this employee group, affiant met and discussed the case with Mr. E. C. Thompson, Executive Secretary of the National Mediation Board, at the Board offices in Washington, D. C. At that time, an authorization card to be circulated among the employees was shown to Mr. Thompson, and his comments on it requested. He

stated that, although some surplus language appeared on the card, the paragraph containing the delegation of the employees right of representation was adequate and was sufficient to establish the Association's representatives before the Board. Said card is attached hereto as Exhibit "A".

After said meeting, the Association's organization was completed, and the cards were circulated and returned, after signature, by some 6,400 employees. At the first meeting of the Board of Directors of the Association, the purpose and intention of the Association was stated. That is to establish the association before the National Mediation Board, to seek relief from that Board in the form of a hearing to disclose the inappropriate nature of the class or craft designated; to accomplish division of the class or craft into three parts, passenger service, clerical and ramps and stores; and to secure a ballot form which includes on it a space wherein a vote for or against union representation could be cast. Broadly, these requests for relief reflect the Association's desire to express the intention of its members to assert their right to no representation.

This position is due to the inappropriate nature of the class or craft as it now exists. Created by Board decision some 15 years ago in Docket number 1706, the grouping amalgamates the interests of a number of totally unallied and unconnected classifications. Widely diverse and disparate occupations such as cleaning-woman and passenger agent or baggage handler and electronic computer technicians are contained in it. It is the feeling of the members of the Association for the Benefit of Non-Contract Employees, that no one bargaining representative can either fairly or equitably represent the interests and desires of such variegated classifications. If divided into three parts as requested by the Association, the new groups would be much more closely identifiable in function and

interest. The Association feels that a hearing before the National Mediation Board would establish the unreasonable and unwieldy nature of the class or craft as designated.

To accomplish these purposes, the Association on February 12, 1963, petitioned the Board for the relief described above. The Board on March 27, 1963, denied the Association's petition as to all requests.

The grounds of the denial were that the authorization cards used by the Association for the Benefit of Non-Contract Employees did not authorize it to bargain collectively, that the Association for the Benefit of Non-Contract Employees did not seek a ballot place, and did not intend to bargain collectively.

Affiant avers that the Board of Directors of the Association for the Benefit of Non-Contract Employees has not directed or authorized any officer or representative of the Association to refuse to bargain collectively with United Air Lines or under Board procedures. On the contrary, the Association for the Benefit of Non-Contract Employees seeks to bargain for the right they desire, no representation.

The National Mediation Board has informed one of the attorneys for the Association for the Benefit of Non-Contract Employees that it is proceeding with arrangements for the holding of an election under the procedures of the Board on the 22nd day of April, 1963. Unless restrained, the Board will proceed with that election in derogation of the rights of the Association for the Benefit of Non-Contract Employee's members as set forth in detail herein.

The decision of the Board refusing to grant either status or relief to the Association for the Benefit of Non-Contract Employees is unjust and unlawful in that it denies to the majority of employees in this class or craft a fundamental

right, inherent in the Railway Labor Act and the Constitution of the United States, the corollary of right to bargain collectively, the right to not bargain collectively.

The ballot form proposed to be used by the National Mediation Board contains no space on it wherein a voted can cast a vote for no representation. On the contrary, the ballot provides only the opportunity to vote for one of the unions named. While there is a line wherein the voter could write the name of another representative or organization, the total effect of the ballot is to require the voter to vote for some representation. The only alternative that is left to the voter is to deface or destroy the ballot. It is respectfully urged that this method of action is not commensurate with the democratic processes of the United States. With such a ballot there is no method by which the voter can unequivocally vote for no representation. The absence of defacement of his ballot being possibly construed as the act of a "disinterested minority". The employee who desires not to be represented has no available method by which he can indicate to the Board his determined desire to avoid representation. The members of the Association for the Benefit of Non-Contract Employees are in this situation. By virtue of the election procedure proposed to be used by the Board these employees are being discriminated against, and are being denied their bargaining right to have no representation. Although the Association has requested that this situation be changed by the Board by the simple expedient of adding a space for a "no vote" on the ballot form the Board has refused to grant this relief.

The inference which the ballot leaves with the employee receiving the ballot is that the voter must vote for one of the unions named or for another or for a representative of his choice. The authority of the Board is to certify a representative as elected by the employees. It is not to

direct the workers to elect a union, this action places the Board in the position which exceeds its statutory authority. The Board should be restrained from holding the election until a condition is created in which the employee can assert a free choice to have no representation.

The ballot form which was adopted in 1934 by the Board does not reflect the changing and developing nature of the air lines industries. Certain areas of employees have been developed wherein large delegations of responsibility and authority now exist; highly trained technicians are used in the newly discovered fields of electronic computers. Many individuals serving in such capacities prefer to rely on individual bargaining agreements to determine their rates of pay, advancement, tenure and other emoluments. No statutory authority or constitutional bar exists with respect to the right of the worker to bargain individually if he so desires. On the contrary, the Railway Labor Act implicitly guarantees to the employee freedom of choice in his actions. The actions of the Board have effectively denied the Association's members an opportunity to exercise that freedom. If not restrained the election will succeed in designating a bargaining agent, a union, not desired but against the wishes of the majority group of employees in the craft of class.

The Board's rules declare that a majority of the votes cast in an election determines the union representative, provided a majority of the class or craft votes. The danger created by this procedure is especially applicable to the present case. Here a large number of the class or craft in a bargaining unit of approximately 12,300 employees will be compelled, in order to express their desire for no representation to refrain from voting. A number will vote. The winning union, although having a minority of votes cast would be certified by the Board. This inequity would be corrected by the addition of a "no vote" on the ballot.

In providing a space for a "no" on the ballot the Board would not be acting without precedent. Under the procedures of the National Labor Relations Act, a space for no union representation is regularly provided on the ballot form. Neither the National Labor Relations Board or the National Mediation Board are given specific directions under their statutory enactments as to the manner in which the ballot is to be prepared. However, the National Labor Relations Board has acted in a manner designed to protect the will of those employees seeking no union representation, while the National Mediation Board has refused to do so.

As mentioned, the Board also denied the Association for the Benefit of Non-Contract Employees request for a hearing to determine the appropriateness of the class or craft, and the request for a new division of the class. Affiant avers that an investigation by the Board and an open hearing would immediately expose difficulties of working with this designation made some 15 years ago. Through such a hearing the National Mediation Board would discover that as stated by the Association for the Benefit of Non-Contract Employees, a large number of the employees in this group have established valuable individual bargaining agreement. These agreements have come about after years of service and in a labor market wherein employees of great skill and technical knowledge and ability are well able to bargain individually, because of a great demand for their services. To group employees with such occupations as janitors, laborers and baggage-handlers, creates a problem which cannot be handled by a single bargaining representative. The interests, aims and purposes of these different groups require different approaches and different bargaining methods and agreements. The National Mediation Board's refusal to permit a hearing has prevented the Association for the Benefit of Non-Contract Employees from placing this evidence before it. The

Board's refusal to grant the Association status as a party in interest has prevented the Association's presenting the desires of its members for no representation. Since the Board's ruling in case number R-1706 made 15 years ago, in the very beginnings of the air line industry and upon railroad concepts, many advances in service and method have been made. Those advances have required the training and utilization of a new group of highly trained and skilled individuals. In a limited sense, these individuals constitute the heart of the modern air line. Such individuals are involved here. They desire to be heard. They desire to express their desire to vote for or against representation. The Board's unlawful action has denied them any and all relief. The National Mediation Board has denied them their statutory right to a free election and will deprive them of valuable property rights in their individual bargaining agreements without due process of law under the Fifth Amendment of the Constitution of the United States. Such damage will be irreparable.

ASSOCIATION FOR THE BENEFIT OF
NON-CONTRACT EMPLOYEES

By

/s/ JAMES F. SHEAHAN, President

Subscribed and sworn to before me this 12th day of April, 1963.

MARVIN G. GIOMETTI
Notary Public

In and for the City and County of San Francisco, State of California. (Commission Expires: 4/26/63)

EXHIBIT "A"

I hereby authorize the hereinafter named persons to act on my behalf as incorporators and directors for the purposes of finding and directing the affairs of the corporation to be known as an "Association for the Benefit of Non-Contract Employees" of which I wish to be a member.

The same individuals are hereby authorized and empowered to represent me before the National Mediation Board.

The execution of this instrument revokes any authorization heretofore made for the appointment of a representative.

.....

Motion for Temporary Restraining Order

Plaintiff, Association for the Benefit of Non-Contract Employees, hereby moves this court to issue a temporary restraining order pursuant to Fed. R. Civ. P. 65, and in support thereof states:

1. Plaintiff has filed herein on April 13, 1963, a verified Complaint for injunction and other relief; Motion for Preliminary Injunction, Affidavit of James F. Sheahan, President; and Memorandum of Points and Authorities in support of the motion.

2. Defendants have been served with summons and copies of the aforesaid documents, but the time for defendants to respond thereto has not yet elapsed.

3. As stated in the said Affidavit of James F. Sheahan, President, and in the said verified Complaint, defendants intend to hold a representation election pursuant to the Railway Labor Act § 2, 44 Stat. 577, as amended, 45 U.S.C.

§ 152, among a certain group of employees of United Air Lines, including some 6400 employees represented by plaintiff; and that defendants intend to hold such election on April 22, 1963, before trial of this action or hearing on plaintiff's Motion for Preliminary Injunction can be had.

4. As further stated in the said Affidavit of James F. Sheahan, President, and in the said verified Complaint, plaintiff petitioned to intervene as a party in interest in the proceedings before the National Mediation Board designated as Case No. R-3950 requesting a hearing as to the proper designation of the class or craft of employees subject to the election; plaintiff further petitioned that if its request for a hearing were denied that defendants provide an election ballot which would permit a voting employee to cast a vote against any representation; that said petition of plaintiff was denied by the Board in its entirety; and that the scheduled election will be in violation of the statutory and Constitutional rights of plaintiff's members and will irreparably damage them.

5. Immediate and irreparable injury, loss, and damage will result to plaintiff if defendants are permitted to conduct such election before notice can be served and a hearing had on plaintiff's Motion for Preliminary Injunction, inasmuch as plaintiff is without any administrative or judicial remedy to review defendants' illegal action in conducting the election in the manner complained of by plaintiff.

WHEREFORE, plaintiff moves the court to issue a temporary restraining order:

1. Restraining defendants from conducting any election under National Mediation Board Case No. R-3950, or certifying any representatives of said employees, pursuant to said case or any other proceeding before the National Mediation Board without first conducting a hearing and permitting plaintiff to be heard as a party in interest re-

lating to the question of the appropriateness of the class or craft of employees among whom such election is to be held; and

2. Restraining defendants from conducting any election among said employees in which the form of the ballot does not permit a voting employee to cast a vote either for or against representation.

Dated: April 18, 1963

ALEX L. ARGUELLO
244 Kearny Street
San Francisco 8, California
SUtter 1-5080

JEROME C. MUYS
Jerome C. Muys
Tower Building
Washington 5, D. C.
MEtropolitan 8-6474
Attorneys for Plaintiff

Temporary Restraining Order

This cause came on to be heard on plaintiff's verified complaint and its motion for a temporary restraining order pending hearing on plaintiff's motion for a preliminary injunction, from which it appears to the court that defendants are about to conduct a representation election under Section 2 of the Railway Labor Act, 4 Stat. 577, as amended, 45 U.S.C. § 162, on April 22, 1963, which will affect some 6400 employees represented by plaintiff as set forth in plaintiff's complaint, and will carry out such election unless restrained by order of this court. It further appears that immediate and irreparable injury, loss, and damage will result to plaintiff's members if the election is conducted before a hearing can be had on plaintiff's

motion for a preliminary injunction, in that if defendants are permitted to carry out the election in the manner complained of by plaintiff, plaintiff's members will be without any administrative or judicial remedy to review the action of the defendants, which action plaintiff contends is in excess of the defendants' statutory authority and will deprive plaintiff's members of their rights and property without due process of law.

IT IS ORDERED, therefore, that:

1. Defendants, and each of them, are hereby restrained from conducting any representation election under National Mediation Board Case No. R-3590, or certifying any representatives of the employees affected by that case; provided that (see below)

2. This order shall expire April 24, 1963 at 5:00 P.M. unless within such time the order for good cause shown is extended or unless defendants consent that it may be extended for a longer period;

3. Plaintiff's Motion for Preliminary Injunction be set down for hearing on April 24, 1963 at 10:00 A.M.; and

4. Copies of this Order be immediately served by the United States Marshal upon defendants.

Dated: April 18, 1963

/s/ G. L. HART, JR.
United States District Judge

Issued at: 2:27 P.M., April 18, 1963
/s/ G. L. HART, JR.

Plaintiff, or his agent, first file an undertaking with surety, or cash in lieu thereof, in the sum of $100.00 for payment of such costs and damages as may be incurred or suffered by any party who may be found to be wrongfully restrained or enjoined.

Opposition of Defendants to Plaintiff's Motion for Preliminary Injunction

Come now defendants by their attorneys and in opposition to plaintiff's motion for preliminary injunction submit the Affidavit of Eugene C. Thompson, Secretary of the National Mediation Board, and a memorandum in opposition, both attached hereto, and made a part hereof.

JOHN W. DOUGLAS
Assistant Attorney General
Civil Division

DONALD B. MACGUINEAS

HARLAND F. LEATHERS

RICHARD S. BEATTY
Richard S. Beatty
Attorneys, Department of Justice
Attorneys for Defendants

AFFIDAVIT

CITY OF WASHINGTON
DISTRICT OF COLUMBIA } ss

EUGENE C. THOMPSON, being first duly sworn, deposes and says:

1. I am the Executive Secretary of the National Mediation Board, and as a part of my official duties have custody of the Board's files and records. I have examined the Board's files and records relating to NMB Case No. R-3590 involving representation of Clerical, Office, Stores, Fleet and Passenger Service employees of United Air Lines, Inc. (hereinafter referred to as United), and find the following information therein concerning this case.

2. On August 24, 1962, the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station

Employes (AFL-CIO), (hereinafter referred to as BRC) filed application pursuant to Section 2, Ninth, of the Railway Labor Act, amended (45 U.S.C.A. 152.9) for investigation of a representation dispute among the craft or class of employees of United "Commonly known as clerical, office, stores (excluding stores employes represented as of August 24, 1962, by the International Association of Machinists), fleet (excluding fleet service employes represented as of August 24, 1962, by the International Association of Machinists) and passenger service employes." As a result of preliminary examination to which all such applications are subject, the craft or class designation above stated was questioned by the Board in letter dated August 27, 1962, (copy attached marked Exhibit 1) to Mr. George M. Harrison, Grand President of the Brotherhood of Railway and Steamship Clerks. Mr. Harrison's explanation of the craft or class designation shown in his application was contained in letter to the Board dated August 27, 1962. (Copy attached marked Exhibit 2).

3. On August 30, 1962, United and the International Association of Machinists (hereinafter referred to as IAM) were advised of this application and requested to submit their statements in respect thereto. United was also requested to furnish the total number of employees covered by this application. (Copy attached Exhibit 3).

4. On September 7, 1962, United responded to our letter of August 30, 1962, (copy attached as Exhibit 4) stating it is the carrier's position that the BRC application involved only a part of a group of employees which the Board had found to constitute a craft or class, and it should, therefore, be dismissed. The carrier also advised they would not, at that time, furnish the number of employees involved. On September 11, 1962, the IAM replied to our letter advising that in their opinion the craft or class covered by the BRC application did not conform to the

Board's findings, particularly as set forth in NMB Case No. R-1706, et al., (copy attached affidavit as Exhibit 5).

5. The BRC, on October 5, 1962, amended its application to cover the craft or class commonly known as Clerical, Office, Stores, Fleet and Passenger Service employees (copy attached as Exhibit 6). After further exchange of correspondence with United and IAM, the amended application, covering the craft or class of Clerical, Office, Stores, Fleet and Passenger Service employees, as established in determination issued by this Board in Case No. R-1706, et al., dated January 31, 1947, (copy attached marked Exhibit 7) was docketed as NMB Case No. R-3590, on November 8, 1962.

6. Mediator William F. J. Klatte was assigned to conduct an investigation of this case commencing November 19, 1962. This investigation consisted of checking the authorization cards furnished by the BRC in support of their application against a list of employees furnished by the carrier for that purpose. On December 19, 1962, the National Mediation Board authorized an election be conducted among the employees involved based on Mediator's report that his investigation showed sufficient evidence to warrant finding that a representation dispute existed among these employees under the Board's rules. (Copy attached marked Exhibit 8. See Part 1206).

7. On December 19, 1962, prior to recessing this case for the holidays and to allow the Mediator to attend the Board's Annual staff meeting, the Mediator advised the officers of United that the National Mediation Board had ordered an election among the employees in question and requested a list of employees involved showing names, occupations, locations, and home mailing addresses to be ready when the Mediator returned on January 14, 1963. Upon his return on January 14, 1963, the Mediator inquired about the status of the preparation of this list, and

was informed the carrier had decided the request for this list was premature in the absence of a ruling from the Board on United's request, dated September 7, 1962, that a public hearing be held to establish the proper craft or class of employees involved in this case. The company renewed this request in letter dated January 11, 1963. (Copy attached as Exhibit 9). After consideration of this letter the Board replied under date of January 17, 1963, (copy attached as Exhibit 10) calling attention to the fact that in the Board's opinion the carrier is not, and cannot be, a party to this representation dispute. This opinion is based on the National Mediation Board's policy, formulated early in the Board's history under the 1934 amendments to the Railway Labor Act, which has been enunciated many times in our annual reports and communications to rail and air carriers subject to the Act.

8. Our letter of January 17, 1963, also denied the carrier's request for a hearing on the craft or class established under Case No. R-1706, et al., for the reason that the carrier is not, in the Board's view, a party to this dispute. The Board also called attention to the fact that no such request had been received from either party to this dispute, namely, the BRC and the IAM. On January 25, 1963, (copy attached as Exhibit 11) the carrier addressed a letter to Chairman Edwards asking the Board to reconsider its denial for a hearing contained in our letter of January 17, 1963. In executive session on January 31, 1963, the Board gave full consideration to the position of the carrier with respect to the craft or class of employees involved in this dispute, and on February 4, 1963, addressed a letter to the carrier fully outlining its reason for again denying their request for a hearing on the craft or class (copy attached as Exhibit 12).

9. On January 18, 1963, United addressed a letter (copy attached as Exhibit 13) to Board Member O'Neill taking the position the Board should use a form of ballot which

would provide a space for a vote for "no representation". The Board replied on January 24, 1963 (copy attached as Exhibit 14), advising the Board sees no reason to deviate from its customary form of ballot in the current dispute. This form of ballot has been used by the Board in over 3,400 representation elections among various crafts or classes of railroad and airline employees since 1934, among which were several elections involving other classes of United employees, at which times the company made no objection to the form of ballot such as they have now raised. On February 1, 1963, the carrier wrote Chairman Edwards (copy attached as Exhibit 15) referring to our letter of January 24, 1963, and requesting reconsideration of the decision made in our letter to the carrier of January 24, 1963, supra. This request was again given careful consideration by the Board and under date of February 7, 1963, the Board replied to the carrier (copy attached as Exhibit 16) reiterating their reasons for denying the carrier's request for a change in the form of ballot.

10. During this exchange of correspondence the Mediator was in Chicago waiting for the Carrier to furnish the list of employees which would enable him to proceed with plans for conducting the election. On February 4, 1963, the Mediator again inquired about the status or preparation of the eligible list and was advised by the carrier that the task was a large one and the list would not be completed until approximately February 11, 1963. On that date the Mediator further inquired concerning the status of the list and was advised by the Carrier's officers that they had decided to decline to prepare and furnish the list. The Carrier so notified this office by letter of same date (copy attached marked Exhibit 17). The list referred to in the second paragraph of the Carrier's letter of February 11, 1963 is the one furnished the Mediator on November 27, 1962, for checking the authorization cards submitted by the BRC in support of their application and contained only

the names, occupations and locations of the employees, but did not include the mailing addresses which would be required to conduct the election. The list containing the mailing addresses is the one which the Carrier has refused to furnish. It will be noted the Carrier advised that if the Board wished to exercise its statutory authority to make copies of revelant "books and records" of the company (Section 2, Ninth, of the Railway Labor Act, copy attached marked Exhibit 18), they would make them available to the Board's representatives at the carrier's executive offices. On February 12, 1963 the Board directed its Mediator to secure this information from the Carrier's records.

11. In several places in the Motion for a Preliminary Injunction filed by the Plaintiff; the affidavit filed by President J. F. Sheahan of ABNE; and the Memorandum of Points and Authorities filed by the Plaintiff, the statement is made that on January 28, 1963, certain representatives of the employee group known as the Association for the Rights of Non-Contract Employees (hereinafter referred to as ARNE), including Mr. Sheahan, met with the undersigned in the Board's Washington Office at which time it is stated the authorization cards that would be circulated to the employees was shown to the undersigned who was reported to have said: "the paragraph containing the delegation of the employees right of representation was adequate and was sufficient to establish the Association's representatives with the Board". This statement does not coincide with the facts of what transpired in the January 28, 1963 meeting between the undersigned and the employee committee.

The undersigned, accompanied by Assistant Executive Secretary Thomas A. Tracy, met on January 28, 1963 at 2:30 P.M., with Mr. George W. Jansen, an employee of United who acted as spokesman for the group of approximately 27 persons identifying themselves as United em-

ployees. Mr. Jansen stated he then spoke for approximately 1,200 employees of United on the West Coast and demanded the undersigned furnish him with a reply to his request for a public hearing dated January 24, 1963 which was in the form of a letter accompanied by copy of a telegram (copy attached marked Exhibit 19) received on the morning of January 28, 1963. This group included Mr. James F. Sheahan who subsequently has identified himself as the President of the Association for the Benefit of Non-Contract Employees (hereinafter referred to as ABNE). Mr. Sheahan stated he represented approximately 500 employees of United who were members of ABNE which was then being organized on the West Coast. Mr. Sheahan stated this Association was then engaged in incorporating and was circulating authorization cards among Customer Contact Employees stated by the group to be approximately 5,000 in number and further stating the employees intended to petition the Board on behalf of the Association for certain action in connection with the forthcoming election. The undersigned was unable to determine from the conversation with Messrs. Jansen, Sheahan and others whether they intended to intervene formally as a party to this dispute, or whether they intended to petition on behalf of the signatories to the authorizations for a hearing on the subject of craft or class. During the January 28, 1963 meeting a document was presented to the undersigned by Messrs. Jansen and Sheahan containing writing which they stated they intended to have printed to include on the authorization cards being circulated among United employees. This writing contained the language set forth below:

> "I hereby authorize the hereinafter named persons to act in my behalf as incorporators and directors for the purpose of forming and directing the affairs of a corporation to be known as an 'ASSOCIATION FOR THE BENEFIT OF NON-CONTRACT EMPLOYEES' of which I shall be a member.

"These same individuals are hereby authorized and empowered to represent me before the National Mediation Board.

"The execution of this instrument revokes any authorizations heretofore made for the appointment of a representative."

The undersigned took particular pains to point out to Messrs. Jansen and Sheahan and others in the group of 27 employees that he, the undersigned, did not consider the language "These same individuals are hereby authorized and empowered to represent me before the National Mediation Board" as sufficient, under the Board's rules and regulations to secure recognition by the National Mediation Board for ARNE as an intervenor in Case R-3590 for the reason the language did not authorize ARNE to represent the signatories for the purposes of collective bargaining under the Railway Labor Act. The undersigned informed Messrs. Jansen, Sheahan and committee that although he could not speak for the Board, generally an authorization card containing an authorization to represent the signatories for the purpose of collective bargaining under the Railway Labor Act is considered by the Board as necessary to secure recognition of a petitioning organization as an intervenor under the Board's rules for the purpose of securing a place on the ballot, provided authorization from 35% of the employees in the craft or class in question are presented to the Board in support of such petition. The undersigned further endeavored to ascertain from Messrs. Jansen and Sheahan if this group intended to intervene as a party to this dispute and secure a place on the ballot as a candidate in the election. The undersigned was informed a decision on that point had not yet been reached by the employee group, and they intended to make such a decision upon their return to the West Coast and at the time the new association was to be incorporated.

The employees further asked how much time would be given them to circulate their cards and come in with a petition. The undersigned advised them he could not give a positive answer to their inquiry. They were advised, however, that the Board's mediator was at that time engaged in preparing a list of eligibles from the carrier's records which task had not yet been completed. I informed them that as a Board representative I could not promise any specific time in which they could conduct a card campaign and present their petition. They were in possession of the Board's rules and regulations governing the handling of representation disputes under the Railway Labor Act appearing in the Code of Federal Regulations, Title 29, Chapter X.

12. On February 14, 1963 Mr. James F. Sheahan, accompanied by certain other individuals stating themselves to be employees of United appeared at the Board's Washington Office and presented the undersigned with a letter bearing the date of February 11, 1963, addressed to Chairman Edwards of the National Mediation Board. This letter incorporated a petition to the National Mediation Board for certain action which is described therein. (Copy attached marked as Exhibit 20) That letter stated the ABNE, as of that date, represented 5,100 employees in the Customer Contact and Office Clerical groups of United, evidenced by signed authorization cards from each of said employees. Mr. Sheahan brought with him a bag containing these cards which were displayed to the undersigned but not turned over to him at that time for the reason the employee committee stated they wished to take them back and have certain records made therefrom for their files after which action the cards would be presented to the Board as evidence supporting the petition. On February 25, 1963 Mr. Sheahan wrote the Board stating ABNE was still actively campaigning for membership and to date had in excess of 6,000 signed authorization cards from non-

contract employees. This letter stated that upon completion of the IBM tally the remainder of the cards would be forwarded to the Board. Subsequently the cards were brought to the Board's office by Mr. Richard Harrell, the Washington representative of the ABNE's Board of Directors. Copy of Mr. Sheahan's letter of February 25, 1963 together with copy of the attachment metioned therein is attached marked Exhibit 21, the postscript of which reads as follows:

> "P.S. Perhaps to answer some unasked questions, these points should be made clear:
>
> 1. We are not seeking recognition as a bargaining agent; we do not want our name on the ballot.
>
> 2. We have no intention of becoming a Company union.
>
> 3. We are not sanctioned, recognized, or assisted in any way by United Air Lines management.
>
> 4. Our Association will be dissolved after such time as it has served its purpose."

Additional cards were presented by Mr. Harrell and all cards are presently being held in the Board's offices. The ABNE has stated they have presented a total of approximately 6,400 cards. No attempt has been made by the Board to verify this number or to check the signatures on the cards against the eligible list which has been prepared by the mediator for the reasons which are fully explained in Board's letter of March 27, 1963 denying the February 11, 1963 petition of the ABNE. (Copy of which is attached to Mr. Sheahan's affidavit marked as Exhibit B).

13. On April 3, 1963 Mr. Sheahan addressed a letter to Chairman Edwards of this Board requesting reconsideration of the denial of February 11, 1963 petition made in the Board's letter of March 27, 1963. Copy of this letter is attached to complaint filed by the plaintiff marked Ex-

hibit C. This letter was considered by the Board in executive session on April 11, 1963 at which time action was taken denying the April 3, 1963 request for reconsideration. Advice of this denial was given to the attorney for ABNE in telegram dated April 12, 1963. (Copy attached marked Exhibit 22).

14. Section 2, Second of the Railway Labor Act reads:

> "All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute."

An authorization to represent employees before the Mediation Board by a group which states that it does not wish to be on the ballot is not considered a claim to be a representative for collective bargaining under the Railway Labor Act. The sole function of the National Mediation Board in handling representation disputes under Section 2, Ninth is to act as a referee between the contesting parties to determine who is the representative and to certify such representative in writing to the carrier.

15. A copy of the ballot to be used in this election is attached marked Exhibit 23. This form of ballot was first authorized by the U.S. Railroad Labor Board in its Decision No. 218, dated July 26, 1921 (Copy attached marked Exhibit 24). The ballot was later revised by the U.S. Railroad Labor Board in its Decision No. 418, dated November 19, 1921, by omitting identifying information (Copy attached marked Exhibit 25). Following creation of the National Mediation Board on June 21, 1934, the Board on August 4, 1934, formulated and approved rules for conducting representation elections. The ballot sanctioned by this action is attached marked Exhibit 26. The Board

authorized a modification in this ballot effective July 1, 1956, copy of which is attached marked Exhibit 27.

16. The Board has given careful consideration to whether or not a hearing is required for the purpose of determining the composition of the craft or class, and has concluded for the reasons stated in the February 4, 1963 letter to Mr. Mason, Exhibit 12, that there is no necessity for holding such a hearing for the purpose of an election in this dispute.

17. The Board does not issue a certification after a representation election has been held unless a majority of those eligible to participate in the election have cast valid ballots. A valid ballot is one that is marked to indicate that the voter desires to be represented by one of the contesting organizations, or by a representative designated by the voter in the space provided on the ballot. If a ballot is blank, or is marked by the voter to indicate he does not desire representation, it is not counted as a valid ballot, in determining that a majority of those eligible have participated in the election.

18. The certification is issued by the Board in compliance with its duty under Section 2, Ninth, of the Act to certify the duly designated and authorized representatives of the employees in the craft or class with whom the carrier shall treat for the purposes of the Act. A sample form of certification is attached as Exhibit 28. Wages, rules and working conditions are not established by a certification. The certification merely authorizes an employee representative to bargain. Thereafter, conditions of employment become a product of the collective bargaining process.

19. Because of the unique circumstances in a few cases (R-2783, C-2252 and C-2389) the Board exercised its discretionary authority in relation to the craft or class and authorized a vote among Stock Clerks as the most effective way to implement the purposes of the Act. In subsequent

cases, the full craft or class of Clerical, Office, Stores, Fleet and Passenger Service employees as set forth in Case No. R-1706, et al. was used in elections held under Cases R-2953, R-3013, R-3048, R-3105, R-3119, R-3165, R-3191, R-3222, R-3256, R-3278, R-3307, R-3347, R-3365, R-3399, R-3416, R-3488, R-3535 and R-3555.

20. The Board's records on Case R-3590 show this case has been under active handling by the Board since August 27, 1962 and a dispute was found to exist among the craft or class of employees involved on December 19, 1962. The Board's mediators have spent approximately three months in preparing a list of the eligible employees from the carrier's records due to the refusal of the carrier to furnish that information to the mediators. The eligible list has now been completed and agreed to by the contesting organizations, namely the BRC and the IAM. The notice of election and ballots have been printed and the mediator is now in the process of preparing the ballots for mailing to the eligible employees. Any further delay at this time would nullify much of the effort expended by the Board to conduct an election.

E. C. THOMPSON
E. C. Thompson,
Executive Secretary
NATIONAL MEDIATION BOARD

Subscribed and sworn to before me
this 22nd day of April, 1963.

WILLIAM B. BINSWANGER

(SEAL)

Exhibit 1

August 27, 1962

Mr. George M. Harrison
Grand President
Brotherhood of Railway and Steamship Clerks,
Freight Handlers, Express and Station Employes
Brotherhood of Railway Clerks Building
Cincinnati 2, Ohio

Dear Mr. Harrison:

This will acknowledge your letter dated August 24, 1962, attaching representation application covering "Commonly known as clerical, office, stores (excluding stores employes represented as of August 24, 1962, by the International Association of Machinists), fleet (excluding fleet service employes represented as of August 24, 1962, by the International Association of Machinists) and passenger service employes," employees of United Air Lines, Inc.

We observe from the craft description that stores employees represented as of August 24, 1962, by the International Association of Machinists, and fleet service employees represented by the same Association as of the same date, are excluded from the application.

Please advise us of the significance of the date contained therein. Is it the position of your organization that employees hired in the excluded categories after August 24, 1962, would be covered by the application?

Very truly yours,

E. C. THOMPSON
Executive Secretary

Exhibit 2

GRAND LODGE
BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
BROTHERHOOD OF RAILWAY CLERKS BUILDING
CINCINNATI 2, OHIO

Geo. M. Harrison
Grand President

File 230-449-7

Subject: Organization—United Air Lines, Inc.

August 27, 1962

Air Mail
Mr. E. C. Thompson, Exec. Secy. (2)
National Mediation Board
Washington 25, D. C.

Dear Sir:

Please be referred to my letter of August 24, 1962, requesting the services of the National Mediation Board, under Section 2, Ninth, of the Railway Labor Act, as amended, for the purpose of securing certification as to who is the representative designated and authorized, in accordance with the requirements of the Act, of the following craft or class of employes of United Air Lines, Inc.:

> Commonly known as clerical, office, stores (excluding stores employes represented as of August 24, 1962, by the International Association of Machinists), fleet (excluding fleet service employes represented as of August 24, 1962, by the International Association of Machinists) and passenger service employes.

It is our position that all employes of United Air Lines, Inc., who were formerly in the employ of Capital Airlines in the craft or class for which our Organization was certi-

fied by the National Mediation Board as the collective bargaining agent, shall be given the right to vote in any secret ballot conducted by the National Mediation Board for the following reasons:

1. In Interpretation No. 93, Case No. A-6037, the National Mediation Board found:

> "* * *, this Board is of the opinion that the language of Article 1(b) of the agreement of August 3, 1959, reading 'all provisions of this agreement shall be binding upon the successors and assigns of the company' is clear and unambiguous. In other words, the language means just what it says and we so find."

2. The agreement between the Brotherhood of Railway Clerks and Capital Airlines has an effective date of August 3, 1959, and provides in Article 44 that it "shall continue in full force and effect until February 1, 1962, and thereafter unless thirty (30) days written notice is served by either party signatory hereto, as provided in the Railway Labor Act, amended." Neither Capital prior to the effectuation of the merger with United, nor United subsequent to the merger, has served a notice upon our Organization in accordance with the provisions of the Railway Labor Act, as amended, as provided for in Article 44 of the agreement between our Organization and Capital Airlines, mentioned above.

3. Article 3, paragraph (a), of the above-mentioned agreement between Capital Airlines, Inc., and the Brotherhood of Railway Clerks establishes the seniority districts of the employes of Capital in the craft or class commonly known as clerical, office, stores, fleet and passenger service employes. Seniority District No. 1, as provided by Article 3, paragraph (a), of that agreement, is composed of "General Offices and Stores." Employes engaged in the performance of Stores work held seniority on a systemwide clerical roster, known as Seniority District No. 1, Roster,

covering all General Office and Stores Department employes. Thus the employes engaged in the occupations on that seniority roster for Seniority District No. 1 held seniority which was valid for exercising rights to all positions engaged in the performance of General Office work as well as all clerical positions in the Stores Department not represented by the I.A.M. on United.

4. Article 3, paragraph (a), of the above-mentioned agreement between Capital Airlines, Inc., and the Brotherhood of Railway Clerks establishes the seniority districts of the employes of Capital in the craft or class commonly known as clerical, office, stores, fleet and passenger service employes. Seniority District No. 2, as provided by Article 3, paragraph (a), of that agreement, is composed of "All Field Stations." Employes engaged in the performance of fleet service held seniority on a systemwide clerical roster, known as Seniority District No. 2 Roster, covering Cargo, Operations, Reservations, Ticketing, Sales, etc. Thus, the employes engaged in the occupations on that seniority roster for Seniority District No. 2 held seniority which was valid for exercising rights to all positions engaged in the performance of work of Operations, Ticketing, Reservations, Sales, etc., which are not represented by I.A.M. on United, in addition to the positions engaged in the work of Cargo Handling and Cabin Service which are represented by the I.A.M. on United.

5. The Civil Aeronautics Board, in Docket 11699, issued Order No. E-16605—In the matter of the UNITED-CAPITAL MERGER CASE—which provided in Item 2, paragraph (c), as follows:

> "That, except as noted below, United shall be subject to the labor protective provisions set forth in the appendix to this order."

Section 3 of Appendix A—Labor Protective Provisions—to the Civil Aeronautics Board's order, reads as follows:

> "Insofar as the merger affects the seniority rights of the carriers' employees, provisions shall be made for the integration of seniority lists in a fair and equitable manner, including, where applicable, agreement through collective bargaining between the carriers and the representatives of the employees affected.
> * * * *"

This provision requires the retention of all seniority rights for Capital employes under our agreement with that corporation.

By operation of our agreement with Capital Airlines, which provides in Article 1(b) that "all provisions of this agreement shall be binding upon the successors and assigns of the company," and which the National Mediation Board in its Interpretation No. 93, Case No. A-6037, has found that "the language means just what it says and we so find," and by reason of the provisions of Section 3 of Appendix A—Labor Protective Provisions—In the matter of the UNITED-CAPITAL MERGER CASE—Civil Aeronautics Board's Order No. E-16605—which provides that the seniority rights of Capital Airlines' employes shall be dealt with in an equitable manner, the seniority rights of the former Capital employes now in the employ of United, who occupied positions with Capital in Seniority Districts Nos. 1 and 2, mentioned above, and which extended to positions in occupations not now represented by the I.A.M. on United, should entitle them to vote in the determination of the representative for collective bargaining purposes for the employes occupying positions to which their seniority is valid and not now represented by any other organization.

The former Capital employes occupying positions now represented by the I.A.M. on United are, in effect, in a

furloughed status with regard to all positions to which their seniority was valid under our agreement with Capital and are now represented by the I.A.M. Since the former Capital employes in that status have a valid claim to the exercise of their seniority to some positions in the craft or class (as limited) designated in our request for certification by the Board as the collective bargaining representative on United, such employes have a valid right to cast a ballot to determine such representative. It is requested that the Board permit such employes to participate in the vote.

Very truly yours,

GEO. M. HARRISON
Grand President

Exhibit 3

August 30, 1962

Mr. Charles M. Mason
Senior Vice President Personnel
United Air Lines, Inc.,
P. O. Box 8800
O'Hara International Airport
Chicago 66, Illinois

Mr. A. J. Hayes
International President
International Association of Machinists
New Machinists Building
1300 Connecticut Avenue, N. W.,
Washington, D. C.

Gentlemen:

We have an application from the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, to investigate a representation dispute under the provisions of Section 2, Ninth, of the Railway

Labor Act among the following employees of the United Air Lines, Inc.

> Commonly known as clerical, office, stores (excluding stores employes represented as of August 24, 1962, by the International Association of Machinists), fleet (excluding fleet service employes represented as of August 24, 1962, by the International Association of Machinists) and passenger service employes.

A copy of Mr. Harrison's letter to the Board, dated August 27, 1962, setting forth additional information pertaining to this application is attached for each of you gentlemen.

Mr. Mason is requested to furnish total number of employees covered by this application, along with any statement he may care to make.

Since the IAM is the current representative for stores and fleet service employees, Mr. Hayes is requested to submit any statement he may care to make with respect to this application.

Very truly yours,

E. C. THOMPSON
Executive Secretary

6:ec cc: Mr. George M. Harrison

Exhibit 4

UNITED AIR LINES
1200 ALGONQUIN ROAD, ELK GROVE TOWNSHIP, ILLINOIS
Mailing Address: P. O. Box 8800, Chicago 66, Illinois
Telephone 625-1400
EXECUTIVE OFFICES

September 7, 1962

Mr. E. C. Thompson
National Mediation Board
1230 Sixteenth Street, N. W.
Washington 25, D. C.

Dear Sir:

We acknowledge receipt of your letter of August 30 in which you advise United Air Lines that the National Mediation Board has received an application from the Brotherhood of Railway and Steamship Clerks to investigate a representation dispute under the provisions of Section 2-Ninth of the Railway Labor Act among the following employees of the United Air Lines, Inc.:

> "Commonly known as clerical, office, stores (excluding stores employes represented as of August 24, 1962, by the International Association of Machinists), fleet (excluding fleet service employes represented as of August 24, 1962, by the International Association of Machinists) and passenger service employes."

Since the Brotherhood's application excludes certain employees represented as of August 24, 1962 by the International Association of Machinists, the application is inconsistent with the National Mediation Board's determination of craft or class in Case No. R-1706 et al. The application, therefore, is for a group of employees smaller than the craft or class which the Board has found to exist in the airline and industry.

As United has previously advised the Board on a number of occasions, it is our long established policy and practice

to treat only with a labor organization certified by the National Mediation Board pursuant to the Railway Labor Act which requires certification of a duly authorized representative for an entire craft or class. The files of the National Mediation Board will show that United Air Lines voluntarily recognized the International Association of Machinists as the collective bargaining representative of ramp and stores employees in 1948. At the time of this voluntary recognition United supplied the Mediation Board the evidence upon which this recognition was based and the reasons why an exception was being made to its established policy. The National Mediation Board replied, reminding United and the International Association of Machinists that this voluntary recogniztion did not preclude a subsequent determination by the National Mediation Board of the proper craft or class to which the employees would belong.

It is United's position, therefore, that since the Brotherhood's application requests investigation of a representation dispute involving only a part of a group of employees which the Board has found to constitute a craft or class, it should be dismissed. In the event the Board does not see fit to dismiss the Brotherhood's application, the Board should then hold a public hearing to determine whether or not the proper craft or class is that expressed in prior determinations by the Board, or whether the proper craft or class is something other than that previously determined by the Board in these previous cases. Only in this manner can the processing of this application result in the certification to United Air Lines of a duly authorized representative of its employees with which United will be legally obligated to bargain. In making this reply, United does not at this time take any position as to the extent of the proper craft or class of its employees who may be involved in the Brotherhood's application.

In view of United's position as stated above, we will not at this time furnish the total number of employees or our position on the Brotherhood of Railway and Steamship

Clerks' contention with respect to the eligibility to vote of employees formerly represented by it on Capital Airlines who are now represented by the International Association of Machinists on United Air Lines.

Since the Board's decision if it does not dismiss the Brotherhood's application will vitally affect the existing representation of certain employees by the International Association of Machinists, we are sending a copy of this letter to Mr. Hayes for his information

Sincerely,

CHARLES M. MASON
Charles M. Mason
Senior Vice President
Personnel

cc: Mr. George M. Harrison
Mr. A. J. Hayes

Exhibit 5

INTERNATIONAL ASSOCIATION OF MACHINISTS
1300 CONNECTICUT AVE. WASHINGTON 6, D. C.

OFFICE OF THE
INTERNATIONAL PRESIDENT

49-United

September 11, 1962

Subj: United Air Lines, Inc.—
Application Representation
Dispute filed by BRC

Mr. E. C. Thompson
Executive Secretary
National Mediation Board
Washington 25, D. C.

Dear Mr. Thompson:

This will acknowledge the receipt of your letter dated August 30, 1962 wherein you advise of the application filed

by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, to investigate a representation dispute involving certain employees of United Air Lines, Inc. You also enclosed a copy of Grand President George M. Harrison's letter dated August 27th setting forth the position of the BRC with respect to this application.

In reviewing this entire matter, including the information contained in Mr. Harrison's letter of August 27th, it is our considered opinion that the craft or class of employees as requested by the BRC does not conform to the findings of your Board, particularly with reference to the craft or class determination as set forth in Case R-1706, et al.

Respectfully yours,

A. J. HAYES
A. J. Hayes
International President

H/FH/ac
cc: Reeves

Exhibit 6

GRAND LODGE
BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
BROTHERHOOD OF RAILWAY CLERKS BUILDING
CINCINNATI 2, OHIO

Geo. M. Harrison,
Grand President

File 230-449-7

Subject: Organization—United Air Lines

October 5, 1962

Mr. E. C. Thompson, Exec. Secy. (2)
National Mediation Board
Washington 25, D. C.

Dear Sir:

This will acknowledge receipt of your letter of September 13 with regard to our application dated August 24, 1962, for investigation of a representation dispute among certain employes of United Air Lines, Inc. You attached to your letter a copy of one addressed to the Board, dated September 11, 1962, by Mr. A. J. Hayes, International President, International Association of Machinists, commenting upon our request. You were correct in your statement that Mr. Charles M. Mason, Senior Vice President, Personnel, United Air Lines, had furnished me a copy of his letter of September 7, 1962, addressed to the Board, commenting upon our request for the Board's services. It should be noted that a copy of Mr. Mason's letter was also furnished to Mr. Hayes.

Under the Railway Labor Act, an employer is not entitled to participate in a representation dispute, and, therefore, the Board may not take cognizance of Mr. Mason's comment concerning the appropriateness of the

craft or class as defined in my request for the Board's services dated August 24, 1962.

It is noted that Mr. Hayes is collaborating with the management of United Air Lines by also raising the question as to the appropriateness of the craft or class as defined in my letter to the Board dated August 24, 1962. In the last paragraph of Mr. Hayes' letter, he says: "it is our considered opinion that the craft or class of employes as requested by the BRC does not conform to the findings of your Board, particularly with reference to the craft or class determination as set forth in Case R-1706, et al."

Mr. Hayes indicates that the Board furnished him copies of my letters of August 24, 1962, and August 27, 1962, addressed to the Board. It is presumed that since the Board furnished him copies of those two letters, that it also furnished Mr. Hayes a copy of my letter of August 29, 1962. In each of those three letters I made it clear that it was not the intent of our Organization to include in the craft or class description for which we had requested the Board's services in the investigation of the representation dispute any employe of United Air Lines, Inc., subject to an agreement in existence prior to August 24, 1962, the date on which I requested the services of the Board.

The only inference to be drawn from Mr. Hayes' statement, as quoted above from his letter to the Board dated September 11, is that he is of the opinion that our request for the Board's services in this dispute should have included as well the employes in occupations covered by the agreements between the International Association of Machinists and United Air Lines. I am, therefore, hereby advising the Board of my desire to amend the statement of the craft or class as set out in my request for the Board's services under date of August 24. Please substitute for the description of the craft or class for which the services of the Board are requested, the following:

Commonly known as clerical, office, stores, fleet and passenger service employes.

The National Mediation Board is urged to process our request of August 24, 1962, as amended herein, without further delay.

Very truly yours,

GEO. M. HARRISON
Grand President

Exhibit 9

UNITED AIR LINES

1200 ALGONQUIN ROAD, ELK GROVE TOWNSHIP, ILLINOIS

Mailing Address: P. O. Box 8800, Chicago 66, Illinois
Telephone: 625-1400

Executive Offices

January 11, 1963

Mr. E. C. Thompson
Executive Secretary
National Mediation Board,
1230 Sixteenth Street, N. W.
Washington 25, D. C.

Re: *NMB Case No. R-3590*

Dear Mr. Thompson:

Mediator Klatte has requested certain information from United for the purpose of holding an election in reference case. We believe his request is premature in the absence of a ruling from the Mediation Board on the request of United made September 7, 1962 that a public hearing be held to establish the proper crafts and classes on United. We hereby renew our request that such a public hearing be held and set forth herein at some length the reasons necessitating a hearing.

We wish to point out to the Board that the group of employees covered in the representation application filed in the above case does not coincide, either in its original or amended form, with any currently applicable craft or class determination. Further, there are distinguishing features between the members of the heterogeneous group of employees involved in this application which the Board has not had the opportunity to fully consider in any prior proceeding. At a public hearing, the Board will learn of the wide variances in the training, skills and responsibilities of the employees, of the absence of cross-training and cross-utilization between them, and of the absence of a community of interest, for example, between the highly skilled office employees and the janitorial and cleaning employees. The lack of unanimity in the air transport industry in general and on United in particular with reference to the organization of operations, the selection, training, use, representation and lack of permanency in respect to these factors in this dynamic and rapidly changing industry can and should be considered by the Board.

In 1946, in R-1706, the Mediation Board was asked to establish for the first time on an airline a craft or class grouping of employees ranging from what the Board referred to as janitors and laborers to the highest type of technical office employees. The Board attempted in that case to establish a mold to apply to all airlines in the future. Since most of the employees in this heterogeneous grouping were unorganized at the time in the air transport industry, the Board was forced to treat with the important subject of craft or class in somewhat of a vacuum with the "hope" that its prospective determination would provide a basis for stable labor relations in the *future* on *airlines* only because such a craft had been found to provide such a basis in the *past* on *railroads*. Although the Board did avoid a multiplicity of crafts or classes by its determination in R-1706, the Board simply did not have knowledge at the time of its decision (January 31, 1947)

of the changes that would and did later occur in the air transport industry.

The BRC contended during the public hearing in R-1706 that because the Railway Labor Act was amended to cover airlines, the same craft or class treatment on rail lines should be followed by the Board on airlines. Although this specific contention was not accepted by the Board, the Board nevertheless found a craft or class of airline employees that was the counterpart of the railroad craft or class of clerical, office, station and storehouse employees. The IAM, on the other hand, requested a separate craft or class of ramp service and stores employees. This view was rejected by the Board as was the IAM's later request for a reconsideration of the Board's findings:

Although the IAM's request for a reconsideration of the R-1706 findings was denied by the Board in 1947, the Board then stated that its denial did *not* prevent a re-examination of craft or class as applied to these categories of employees in *any* future airline representation disputes. This position was taken in 1947, as the Board later explained in R-2783, in "recognition of the fact that the airline industry was still in a state of development," and further, "that the clerical and related employees on many of the major air carriers were then unrepresented." Thus, the Board recognizes that the lack of representation of the bulk of these employees on many of the major air carriers is a significant factor to be taken into account in representation questions.

At the invitation of the Board, United was present at the public hearing in R-1706 and United's views on craft or class were received by the Board. Based upon its limited experience and in the interests of avoiding an unknown and possibly undesirable multiplicity of crafts or classes, United had recommended adoption of a craft or class substantially the same as the one adopted by the Board.

As early as September 20, 1949, however, United Air Lines advised the National Mediation Board that developments in organization after R-1706 had led United to believe it may have been in error in the position it took before the Mediation Board. United advised the Board that the organizational development by 1949 among the employees on United after R-1706 and changes in United's own operational organization were such that the Board's determination in R-1706 had become impractical both from the employee's point of view and the carrier's.

In 1951, in a matter concerning the proper craft or class grouping of equipment service men, stock clerks or janitors of Northwest Airlines in R-2357, the National Mediation Board accepted the Statement of United Air Lines. In its Statement, United advised the Board that United had definitely concluded, in light of its experience, that the Board's determination in R-1706 did not provide for a proper craft or class for the air transport industry.

In R-2357, decided February 22, 1953, the Board stated that arguments advanced for reconsideration of the proper groupings of the various occupational classifications of employees which may comprise the craft or class of clerical, office, stores, fleet and passenger service employees impressed the Board as having considerable merit. The Board announced in R-2357 that in view of the lapse of five years after R-1706 and because of the "expansion and growth of the airline industry" as well as the "development of representation of airline employees," *the Board was then of the opinion that upon proper application, it would be advisable to re-examine the determination in R-1706, with a view of making such modifications as might be found to be justified at the time in question.*

In R-2783, decided February 16, 1954, in a case concerning a request by the IAM to represent stores employees of Northwest Airlines separately from the broad clerical group included in R-1706, the Board did examine its R-

1706 findings. While it did not re-examine the entire craft or class, the Board concluded that stores employees are a separate craft or class for the purposes of the Railway Labor Act.

In C-2252 and C-2389, decided November 9, 1956, in companion cases relating to the request of the IAM to separate stores employees of Trans-Texas Airways and North Central Airlines from the existing clerical groupings, the Board again re-examined R-1706 findings with reference to stores employees. In so doing, the Board noted that by that time (1956) the representation of the entire clerical craft as outlined in R-1706 showed that such craft was *not* represented as a single unit on any air carriers except six.

The Board went on to say that its records showed that stock and stores employees were organized and covered by collective bargaining agreements on 24 air carriers, independently of the craft as designated in R-1706. United was included by the Board as one of the Board's 24 examples where stock and stores employees were represented as a separate unit by the same organization representing airline mechanics on those carriers. On the basis of evidence presented at the *hearing* and the development of representation among stock and stores employees, the Board concluded that the general purpose of the Railway Labor Act would be more readily achieved and the general duties as specified in Section 2 of the Act would be more readily accomplished by a determination that stock and stores employees are considered separate crafts or classes of employees. The Board's conclusion was reached only after a public hearing.

Inasmuch as United knows of no findings of the Mediation Board subsequent to Cases C-2252 and C-2389 reestablishing the stores employees as a part of the clerical and related group covered by R-1706, it can only be considered now that the R-1706 findings are no longer controlling. It should be noted that the amended application of the

BRC in the current case is based on the now obsolete R-1706 findings.

The importance that the Board's craft or class determinations have in settling of disputes and the promotion of stable labor relations has been clearly recognized by the National Mediation Board. As a necessary corollary, the Board's determination may well disrupt instead of promote stable labor relations and encourage rather than settle disputes among employees. The Board's class or craft determinations have, of course, a demonstrable impact upon the organization structure and operating efficiency of an air carrier.

The Board itself has recognized that it therefore should review and even revise its class or craft determinations with respect to airline employees after a public hearing, and has done so. In R-1447, for example, the Board altered the craft or class of airline mechanics. In R-2357, the Board concluded that R-1706 should be re-examined and in R-2783, C-2252 and C-2389, it concluded that stores employees are no longer properly grouped with the various other components in what had been a craft or class of clerical, office, stores, fleet and passenger service employees as determined in R-1706. Also, and as recently as 1961, the Board, in C-2946, made a drastic change in the grouping of flight deck crew members of the United Air Lines.

As a result of the findings of the National Mediation Board Committee in C-2946, decided January 17, 1961, in the matter of representation of employees of the *United Air Lines, Incorporated—Flight Deck Crew Members*, the Board conducted an election on the basis of a single craft or class in face of a long history of collective bargaining of two separate crafts or classes which had existed not only on United but on a majority of the major air carriers. C-2946 is significant in several respects. In the first place, the Committee found, among other things, that—

> "The airline industry, as distinguished from the railroads, is still in the formative stage and in a period

of expansion, with strong prospects of further technological change. The difference between the railroads and the airline industries affects the application of craft or class principles and criteria with the result that the determination made herein may not be considered, as such, applicable to the railroads."

Further, as pointed out in C-2946, "When governmental participation in the determination of craft and class issues occurred in the railway and air transportation industries, the two branches were in entirely different stages of maturity" and that there is no "high degree of crystallization in craft and class lines" in the "comparatively new air carrier industry" that the years have brought on the railroads. The teaching of C-2946 is that the Board is not necessarily bound by past craft or class groupings; on the contrary, the Board will take a fresh look at crafts or classes in the air transport industry.

Congress has imposed upon United Air Lines, as a scheduled air carrier, the obligation to follow the declaration of national policy to provide "economical and efficient service by air carriers at reasonable charges." United Air Lines is also under the statutory command of the Railway Labor Act to treat "in a proper case" with the representative of its employees as certified by the Board for a craft or class determined by the Board. Because of the impact that the grouping of employees into crafts or classes can have upon an air carrier's organization and operation, it is necessary that the Board establish a craft or class or revise one only after the fullest hearing and after obtaining the views of all concerned—including the carrier. The carrier is obviously in the best position to furnish evidence to the Board on the effect that craft or class groupings may have on interruptions of its service to the public. For example, the Committee appointed by the Board in C-2946 requested information from United before making the important craft or class determination

which had such a dramatic effect upon the entire air transport industry that the President of the United States and the Secretary of Labor intervened.

The inappropriateness of the Board's R-1706 findings of 1947 have been apparent for some time not only to United but to others, as pointed out above. The Board itself, as noted, recognized that the R-1706 findings are no longer appropriate. The fact that 16 years have elapsed since the R-1706 findings and there still is no representation of the clerical and related employees on many of the major air carriers renders R-1706 even more obsolete. United has enlarged to where it is the largest domestic scheduled air carrier. Thus, any craft or class determination made in 1947 for another airline on the prospect of future employee representation, which has never occurred, cannot properly be applied 16 years later to the organizational and operational structure of United. A determination of what craft or class groupings are now appropriate should only be made after a public hearing.

In summary, United Air Lines believes a public hearing is not only appropriate, but necessary to serve the public interest for the following reasons:

The Board's determination in R-1706—issued sixteen years ago—was not based upon actual airline experience and history, but was carried over from the railroads. Whether it would become suitable for the airlines had to be left for future developments.

Experience in the airline industry since 1947 has demonstrated that the Board's determination in R-1706 has not been suitable for the airlines, as witnessed by the fact that the Board itself has reexamined and departed from its R-1706 determination in various subsequent cases (R-2783, C-2389, C-2487), and the organization of employees on major air carriers has not conformed to the R-1706 findings.

United's own experience over the sixteen-year period which has elapsed since R-1706, during which time there has been a substantial growth and evolution in the Company, clearly establish the inappropriateness of R-1706 to present day conditions.

The carrier's ability to operate efficiently and to have stability in labor relations would be severely hampered by imposition of the now obsolete determination on United since R-1706 lumps together heterogeneous groups of skilled and unsiklled employees in a manner wholly inappropriate to the Company's present organizational structure.

The Board, as noted above, has committed itself to take a fresh look in a public hearing at the appropriateness of a craft or class when appropriateness is questioned in light of changed conditions.

Based upon United's study and experience, as well as observations in the industry, United believes that the groups of employees under discussion probably logically separate into three large crafts or classes. At the Board's hearing, United will be prepared to supply the Board with full historical and present facts upon which the Board can judge the propriety of what is proper under all the facts.

Sincerely yours,

S/C. M. Mason
T/C. M. Mason
Senior Vice President-Personnel

cc: Mr. George Harrison
Mr. A. J. Hayes
Mediator Klatte

Exhibit 10

NATIONAL MEDIATION BOARD
WASHINGTON

January 17, 1963

NMB Case No. R-3590

Mr. Charles M. Mason, Sr. Vice President
United Air Lines, Incorporated
P. O. Box 8800
Chicago 66, Illinois

Dear Mr. Mason:

Acknowledgment is made of your letter of January 11, 1963 in re NMB Case No. R-3590. You state you believe the request made by Mediator Klatte for certain information from United Air Lines, for the purpose of holding an election in this case, is premature in the absence of a ruling from the National Mediation Board on the request of United Air Lines dated September 7, 1962 that a public hearing be held to establish the proper crafts or classes on United Air Lines.

Reference to your letter of September 7, 1962 shows the specific request you made was as follows:

> "It is United's position, therefore, that since the Brotherhood's application requests investigation of a representation dispute involving only a part of a group of employees which the Board has found to constitute a craft or class, it should be dismissed. In the event the Board does not see fit to dismiss the Brotherhood's application, the Board should then hold a public hearing to determine whether or not the proper craft or class is that expressed in prior determinations by the Board, or whether the proper craft or class is something other than that previously determined by the Board in these previous cases."

The application filed by the Brotherhood of Railway & Steamship Clerks on August 24, 1962 was not dismissed, and was subsequently amended to cover the craft or class commonly known as Clerical, Office, Stores, Fleet and Passenger Service Employes. You were so advised by copy of Mr. Harrison's letter of October 5, 1962 transmitted with copy of our letter to Mr. Harrison dated October 8, 1962.

In our letter of October 24, 1962, addressed to you and President Hayes of the International Association of Machinists, we inquired whether you were in a position to furnish the number of employes in this craft or class as requested in the last paragraph of our letter of October 8, 1962. On November 2, 1962 you replied and stated "the records of United Air Lines indicate there is a total of 12,451 employes as of October 15, 1962 in such craft as we understand it". You further stated this figure did not include 339 employes classified as Lead Janitors, Janitors or Cleaning Women as of October 15, 1962. Your letter of November 2, 1962 indicated a clear understanding of what is meant by the craft or class commonly known as Clerical, Office, Stores, Fleet and Passenger Service Employees as referred to in the Board's determination issued in NMB Case No. R-1706, et al.

The various comments made in the remainder of your letter of January 11, 1963 have been given careful consideration by the Board. The Board wishes to call your attention, first, to the fact that the carrier is not a party to this representation dispute. Secondly, no request for a review of the craft or class established by the Board's determination in Case No. R-1706, et al has been received from either organization party to NMB Case No. R-3590. The request contained in your letter of January 11, 1963 is not timely made, since the Board, on December 19, 1962, found that a representation dispute existed among the employees in this craft or class, and has authorized an election.

For the above reasons, the Board must deny your request of January 11, 1963 for a public hearing on the subject of a review of the determination made in Case No. R-1706, et al.

It is, therefore, requested that you furnish promptly to Mediator Klatte the necessary information regarding the employees of United Air Lines, Inc. in the craft or class at issue, so he may proceed with plans to hold an election among these employees. Your cooperation in furnishing this information promptly to Mediator Klatte will be appreciated.

By direction of the NATIONAL MEDIATION BOARD.

E. C. THOMPSON
Executive Secretary

cc-to: Mr. G. M. Harrison
Mr. A. J. Hayes
Mr. W. F. J. Klatte

Exhibit 11

UNITED AIR LINES
1200 ALGONQUIN ROAD, ELK GROVE TOWNSHIP, ILLINOIS
Mailing Address: P. O. Box 8800, Chicago 66, Illinois
Telephone 625-1400

EXCUTIVE OFFICES

January 25, 1963

Mr. Leverett Edwards
Chairman
National Mediation Board
Washington 25, D. C.

Dear Mr. Edwards:

Acknowledgment is made of the Board's reply dated January 17, 1963 to United's letter of January 11, 1963. The Board in its reply denies United's request that the Board

hold a public hearing to establish the proper crafts and classes on United.

The purpose of this letter is to protest the Board's refusal and to ask that the Board reconsider United's request. In support of our request for reconsideration, I wish to supplement my letter of January 11, 1963.

We in United are astonished that the Board would make a decision vitally affecting 12,700 employees and which will have a long lasting and adverse effect upon the operating efficiency and economy of United without obtaining the views of everyone concerned. The Board's denial of United's request indicates that the Board is somehow prohibited from obtaining or considering United's views on the craft or class question on the ground that United is not a party to this representation dispute. This is indeed strange since on a number of occasions the Board has specifically invited United to express its views at public hearings on the question of what constitutes a proper craft or class. Indeed, both of the contesting labor organizations have at one time or another in the past complimented United for its expression of such views and have urged United to express them at subsequent public hearings.

In stating that the carrier is not a party to this representation dispute, the Board's reply attributes to United a position it has never sought and does not now seek. United is fully aware that it is not a party to any controversy over the choice of representatives by the employees; indeed, United has no desire to be such a party and recognizes the legal and proper right of the employees to choose their own representatives, if they wish one. United submits, however, that it has a legitimate interest in the scope of a craft or class. In other words, the *only* issue in which United asserts a right to be heard concerns the *scope* of the craft or class—not the identity of the representa-

tive, if any, of the employees of such craft or class in an election.

The Board's failure to recognize United's legitimate interest in the scope of a craft or class will interfere with the efficient conduct of United's business. The refusal by an administrative agency of the Federal government to afford United an opportunity to be heard at a public hearing in a matter which will so seriously affect United's ability to conduct its business is in fact a denial of due process Further, the Board, on its own initiative and in the exercise of its own discretion, should hold the requested public hearing. Any rule of the Board that a carrier does not have a status which entitles it to be heard on the breadth of a class or craft is as archaic as the railroad craft or class in which an election is proposed. The Board has a responsibility under the Railway Labor Act to work for the establishment of stable labor relations in the airline industry. As the Board well knows, a craft or class determination can have a serious and disruptive effect on interstate transportation. This was clearly shown when President Kennedy, on the day of his inauguration, had to assign the Secretary of Labor to mediate airline strikes resulting from a craft or class determination which was arrived at after lengthy public hearings stretching over many months. It cannot be said that the purposes of the Act are better served when an inappropriate craft or class determination is imposed upon over 12,000 employees without any public hearing whatsoever.

You seem to imply in your letter that United's request for a public hearing is tardy and should have been repeated at the time the Brotherhood of Railway Clerks amended its representation application. United had no way of knowing at the time the Brotherhood amended its application that an election would in fact be held. This was not known until Mediator Klatte had checked authorization cards and on approximately December 19, 1962,

advised United that the Board had authorized an election. Prior to that date, we could see no useful purpose to be served in pressing for a public hearing on the subject of how employees should be grouped for voting purposes in an election that might never be held.

You further point out that United had a clear understanding of what is meant by the clerical, office, stores, fleet and passenger service employees craft or class when, on November 2, 1962, we advised you of the total number of United employees in that craft or class. We do not understand the significance of this statement. The fact that United did advise you of the total number of employees in the group described as the craft or class did not, of course, imply that United considered that the grouping was a proper one. Our request for a public hearing was not for the purpose of being advised by the Board where the boundaries of that craft or class lie. Our request was based upon the firm belief that the Board should review its determination of craft or class in R-1706, et al, and determine, in light of the lapse of 15 years, and the other factors set out in our letter of January 11, whether the R-1706 determination was still a proper grouping.

Finally, the imposition by the Board of an inappropriate railroad craft or class upon 12,700 employees of this dynamic and changing air transportation industry is illogical. The "clerical, office, station, and storehouse employees craft or class" grew up out of the historical development of the railroad industry. To say that a craft or class springing from the history of the then static and now declining railroad industry should be forcibly imposed on the airline industry, which has an entirely different history and is still growing, is illogical and improper. If the Board restricts air carriers to railroad rigidity, United will not be able to discharge fully the obligation imposed upon it by Congress through the Federal Aviation Act to provide efficient and economical service at reasonable

charges to the public. In fact, my personal observations of the operations and organization of Capital Air Lines before Capital had to be merged into United or face bankruptcy convinced me that part of Capital's difficulties resulted from the Board's action in 1947 in forcing a vast and heterogeneuos group of employees into a single craft or class because that craft or class had been satisfactory on railroads in the past and the Board "hoped" it would be in the future on air lines.

For these reasons, we strongly urge the Board to reconsider its denial of United's request for a public hearing.

Sincerely yours,

C. M. MASON
C. M. Mason
Senior Vice President—Personnel

cc: G. M. Harrison
A. J. Hayes
W. F. Klatte

Exhibit 12

NATIONAL MEDIATION BOARD
Washington

February 4, 1963
NMB CASE No. R-3590

Mr. C. L. Mason, Sr. Vice President
United Air Lines, Incorporated
P.O. Box 8800
Chicago 66, Illinois

Dear Mr. Mason:

Acknowledgement is made of your letter of January 25, 1963 addressed to Chairman Edwards of this Board, protesting the Board's refusal to hold a public hearing on the

question of craft or class in NMB Case No. R-3590, and asking the Board reconsider United's request.

The Board, in executive session on January 31, 1963, gave very careful consideration to the various statements made in your January 25th letter. As you are aware, the two organizations which are parties to this dispute are in agreement that the craft or class of Clerical, Office, Stores, Fleet and Passenger Service employees established by the Board's findings in NMB Case No. R-1706, et al in the determination issued January 31, 1947, is the proper and appropriate grouping of these employees for the purposes of an election under Case No. R-3590.

The Board has received a number of letters and telegrams purporting to be from employees of United in this craft or class, protesting against a vote embracing the entire craft or class, and in some instances, asking that the Board include a space on the ballot for a vote for "no representation". A statement of the Board's position on these two questions has been prepared, dated January 25, 1963, copies attached. A large number of the communications referred to appear to have been inspired by your circular letter of January 14, 1963 addressed to all United Employees eligible to vote in the election under Case No. R-3590. The total number of such communications, however, represents only a small minority of the approximately 13,000 employees in the overall craft or class which you have reported. The Board is not in position to recognize these requests as justifying a hearing on craft or class in Case No. R-3590.

Your remarks concerning the carrier's interests in a craft or class determination have been given full consideration. Over the years, since the creation of the Board 1934, hundreds of determinations of craft or class have been made governing carrier employees in both the railroad and airline industries. Accommodations to the crafts or classes found appropriate by the Board have been made by the carriers concerned, when necessary, and with practically no protest.

Under all the circumstances existing in this case, the Board can see no justification to open the class or craft question on its own motion. Your request for reconsideration of the Board's decision contained in our letter of January 17, 1963 is accordingly denied.

Mediators Klatte and Pierce, who are assigned to the handling of this case, report that to date the carrier has not furnished them a list of the employees involved in this dispute. The record of this case shows that requests for this list have been made on the following dates:

December 19, 1962 by Mediator Klatte verbally to Mr. Berhoud and Mr. Hill.
January 14, 1963 by Mediator Klatte to Mr. Berthoud
January 17, 1963 in the Board's letter to you
January 21, 1963 by Mediator Klatte to Mr. Berthoud
January 28, 1963 by Mediator Klatte to Mr. Berthoud

Your attention is directed to the last sentence of Section 2, Ninth of the Railway Labor Act, reading as follows:

> "The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph."

You are hereby requested to furnish the list of employees involved in this dispute, in the form requested by Mediator Klatte on December 19, 1962, and corrected to January 14, 1963 without further delay. Your prompt advice as to when this list may be expected will be appreciated.

By direction of the NATIONAL MEDIATION BOARD.

E. C. THOMPSON
Executive Secretary

cc-to: G. M. Harrison
A. J. Hayes
Wm. F. J. Klatte

Exhibit 13

UNITED AIR LINES

1200 Algonquin Road, Elk Grove Township, Illinois
Mailing Address: P.O. Box 8800, Chicago 66, Illinois
Telephone 625-1400
Executive Offices

January 18, 1963

Mr. Francis J. O'Neill
Chairman
National Mediation Board
Washington 25, D. C.

Dear Mr. O'Neill:

Mediator Klatte has asked whether United Air Lines will allow the National Mediation Board to hold a ballot box election on United Air Lines property at points where fifty (50) or more of United's employees involved in Case R-3590 are located.

United Air Lines is willing to allow a ballot box election on Company property provided the ballot follows the form used by the National Labor Relations Board in similar union representation elections held under the National Labor Relations Act. In other words, the ballot would have a space for the employee to vote *against* representation as well as space for the employee to vote *for* representation by the Brotherhood of Railway Clerks or the International Association of Machinists. The ballot also could provide space to vote for "any other organization or individual" or not provide such a space, as the Board might deem proper in the light of the revision of the ballot. We would also expect that the customary rules would be established and followed to insure that the election is conducted without any undue influence upon the employees eligible to vote. If the balloting is conducted in this manner, United also would be willing to have the employees vote during their working

hours in order to provide the fullest opportunity for them to express their decision.

We want to make it very clear that United Air Lines recognizes that how a representation election is conducted is the function of the National Mediation Board. We feel strongly, however, that the employees eligible to vote in the election should know all the choices available to them at the time the voting takes place and how to express their own free choice. The form of ballot customarily used by the Board in elections does not do this since it provides spaces only to vote *for* a collective bargaining representative. It does not offer any way for an employee who does not want a collective bargaining representative to express his choice to remain unrepresented.

We are, of course, aware that under the Board's rules the employees can remain unrepresented if less than 51% of the craft or class cast valid ballots in the election. In effect, however, this means that the employee expresses his choice to remain unrepresented only in a negative manner —by not voting or by invalidating his ballot in some way. Further, to the best of our knowledge, neither the Notice of Election nor any other instructions on voting issued by the Board make clear to the employees how they can indicate their desire to remain unrepresented.

We recognize that the form of ballot customarily used by the National Mediation Board was adopted by the Board in 1934, prior to the appointment of any of the Board's present members. We further understand that the Board in the past has justified the form of its ballot on the ground that the Railway Labor Act contemplates that the employees shall have some form of representation. As stated by the National Mediation Board in "Administration of the Railway Labor Act by the National Mediation Board, 1934-1957", pp. 18-19:

> "The above-quoted excerpts from the act show clearly that it was the intent of Congress in framing the 1934

> Amendments to the original Railway Labor Act of 1926, that both the carriers and employees separately designate representatives for the purpose of collective bargaining. To effectuate this mandate of the Congress, the National Mediation Board, in 1934, designed the form of ballot which has been used without material change to the present time. *This ballot was drafted to permit the employees to secure some form of representation, as contemplated in the sections of the law quoted above.* It leaves to the majority of the employees of any craft or class full freedom to determine who shall be their representative for the purposes of the act." (Emphasis supplied)

United suggests to the Board that the legislative history of the 1934 Amendments to the Railway Labor Act in no way supports the restrictive interpretation placed upon that Act in the above statement. In fact, it lends strong support to a contrary interpretation.

The House Report on H.R. 9861, i.e., the bill which was enacted into law on June 21, 1934 as the 1934 Amendments to the Railway Labor Act, states in pertinent part, as follows:

> "2. It (H.R. 9861) *provides* that employees shall be free to join any labor union of their choice *and likewise be free to refrain from joining any union if that be their desire* and forbids interference by the carrier's officers with the exercise of said rights." (Emphasis supplied) (House Report No. 1944 to accompany H.R. 9861, U. S. House of Representatives, Committee on Interstate and Foreign Commerce, 73d Cong., 2d Sess., 1934 at p.2.)

The bill being considered provided that "Employees shall have the right to organize and bargain collectively through representatives of their own choosing." This is exactly the same language used in Section 2, Fourth, of the Railway Labor Act as finally enacted into law. It is evident, therefore, that the House Committee believed the right of em-

ployees to refrain from collective bargaining was implicit in the language of the bill.

It is also significant that the House Committee, unike the National Mediation Board, saw nothing inherently inconsistent between the right of employees to refrain from collective bargaining and the language of Section 2 of the bill which states that one of the purposes of the Act is "to provide for the complete independence of carriers and of employees in the matter of self-organization . . ."

Further evidence that Congress did not intend to deny employees the right to refrain from engaging in collective bargaining is found in the following statement made by Commissioner Joseph P. Eastman, Federal Coordinator of Transportation and draftsman of the bill which was eventually enacted into law, in response to a question raised by Mr. Huddleston in the House Hearings on H. R. 7650:

> "MR. HUDDLESTON: Well, as I get your idea it is the purpose of this bill not to coerce organization and not necessarily to imply organization.
>
> "COMMISSIONER EASTMAN: No, it does not require collective bargaining on the part of the employees. If the employees do not wish to organize, prefer to deal individually with the management with regard to these matters, why, that course is left open to them, or it should be." (Hearing, H.R. 7650, U.S. House of Representatives, Committee on Interstate and Foreign Commerce, 73d Cong., 2d Sess. 1934 at p.57.)

Further corroborating the foregoing evidence of legislative intent is the following statement by Senator Wagner in the Senate Hearings on S.3266 (the companion bill in the Senate to H.R. 7650) in which he defends the bill against charges that it would tend to promote large national labor organizations:

> "SENATOR WAGNER: I am very glad you (Commissioner Eastman) are bringing out these points so very clearly. * * * (I) think that is the purpose of the Act—

I think it is so expressed in language, to give the worker *a free choice to join* any union he wants, company union or *no union*, and yet they (i.e., the opponents of the bill) have insisted (that) by giving him free choice that it creates a large national union. I do not know how that conclusion is reached, but it has been broadcast, so I am very glad you are clearing that point." (Emphasis supplied) (Hearings on S. 3266, U.S. Senate, Committee on Interstate Commerce, 73d Cong., 2d Sess., 1934 at p. 12.)

Finally, there is the following comment by Senator Wagner at the Senate Hearings on S. 3266 in response to a charge made by Mr. M. W. Clement, Vice-President of the Pennsylvania Railroad Company, that the bill would have the effect of compelling employees to join a labor organization:

"SENATOR WAGNER: * * * I didn't understand these provisions compelled an employee to join any particular union. I thought the purpose of it was just the opposite, to see that the men have absolute liberty to join or not join any union or to remain unorganized.

"MR. CLEMENT: That is the way we hope they will read when they are finally amended."

As you also are aware, the form of the National Mediation Board's ballot was the subject of court review in *McNulty* v. *National Mediation Board,* 18 F. Supp. 494 (N.D.N.Y., 1936). In that case the court decided that the form of the ballot used by the National Mediation Board was improper because it did not afford the employees an opportunity to truly express their will, stating on pp. 501-02 as follows:

"It is manifest that this ballot did not present the issue to the eligible voters.

"The issue, of course, as the mediator admittedly found, was whether the men desired to continue under the individual contract method or the National Union representation.

"Concerning these two methods, the O.R.T. brief says: 'These two methods of employer-employee relationships are diametrically opposite, both in theory and practice. They have nothing in common. There can be no representation under the first method and representation is essential under the other.'

"But the employees had no opportunity to express a choice between these methods. They were in effect told that they must have representation for collective bargaining and were asked to elect between the National Union (O.R.T.) and an unknown.

"Unless the statute in question is meant to compel a majority of the employees (not an individual employee) to surrender their constitutional rights to contract for their own services, and the defendant O.R.T. does not so contend, then the ballot in question in no real sense determines whether the employees wish to retain the old method of individual bargaining or prefer to change over to collective bargaining.

"In short, the ballot is an artificial thing in no wise disclosing which method of contracting the majority wish, but merely shows that, if they must have collective bargaining, they preferred the O.R.T. to some unknown person or organization.

"It is idle to say that 'it was not necessary for the contract men to affirmatively vote their desire in order to win but merely necessary that their vote be against representation by the O.R.T.'

"Fifty employees tried to do just that by putting an x mark in the square opposite the words 'if you desire representation by any other organization or individual mark an X in the square,' but because they did not write in the name of some organization or individual as representative in collective bargaining, the votes were declared void and not counted.

"The ballot gave them no opportunity to vote against representation by the O.R.T., for their choice was limited to representation by O.R.T. or by some unknown representative."

Continuing this line of reasoning, the court stated:

> "Confronted with such a ballot, many may have feared that some militant group might want to write in the name of the president of the railroad or some obnoxious foreman, and, believing that they had to select some one to represent them in collective bargaining, rather than take such chances of an unknown representative, they voted for the known O.R.T.
>
> "How they would have voted had the real issue before them been presented by the ballot, no one knows or can know until another ballot presenting that issue is taken." (p. 502)

Having concluded that the election was unfair, the court declined to exercise its discretionary power to grant the injunctive relief requested by O.R.T., explaining as follows:

> "Shall the court by mandatory injunction compel these men to have collective bargaining when they may not want it and compel the road to treat with the O.R.T. as representative in collective bargaining in such circumstances as here exist. Clearly not, unless the court has no other alternative. . . ." (pp. 502-503)

The court found that it was not absolutely bound to enforce the certification issued by the N.M.B. under circumstances such as these where the manner of conducting the election offended the court's conscience. No appeal was taken from the decision of the trial court, and although the Supreme Court subsequently held in the *Switchmen's* case (320 U.S. 297 (1943)) that a certification by the N.M.B. is not reviewable by a Federal District Court, the *McNulty* case is still persuasive authority in support of the proposition that the form of election ballot presently used by the N.M.B. does not permit a true expression of employee sentiment.

We sincerely hope that the National Mediation Board will see its way clear to revise its election procedures so that our employees and employees of other carriers in future elections will have an opportunity to express their decision

on all of the choices that are available to them, one of which is to remain unrepresented. We will be happy to discuss this matter further at the convenience of the Board.

Very truly yours,

Charles M. Mason
Senior Vice President
Personnel

CMM: bg
cc: G. M. Harrison
A. J. Hayes
W. F. Klatte

Exhibit 14

NATIONAL MEDIATION BOARD
Washington

January 24, 1963
NMB Case No. R-3590

Mr. Charles M. Mason, Sr., Vice President
United Air Lines, Incorporated
P. O. Box 8800
Chicago 66, Illinois

Dear Mr. Mason:

Further reference is made to your letter of January 18, 1963 on the general subject of the form of ballot used by the National Mediation Board in conducting employee representation elections under Section 2, Ninth of the Railway Labor Act.

As you have been previously advised, the Board has consistently held, a carrier is not a party to a representation dispute involving the selection of a representative of its employees. However, the Board welcomes the expression of your views and will give you a summary of its practices and rules in the matter of holding representation elections

which have been developed as the best and most practicable procedures to insure that such elections will be fair and free from interference, influence and coercion.

As you state in your letter, the form of ballot presently used was adopted by the Board in 1934 and has been used since that time as the form best designed to ascertain the representation desires of a carrier's employees for the purpose of collective bargaining. The blank line appearing on the present form of ballot affords an opportunity to the voter to vote for some organization or individual other than those named on the ballot, or he may refrain from voting at all if he so chooses. There is no compulsion that he vote for a contestant for representation. Introduction of a "yes" or "no" ballot would contribute to, if it did not actually encourage, an attempt to circumvent the mandate of Congress that representatives be designated by carriers and their employees for the purposes described in Section 2, First and Second of the Railway Labor Act, which are quoted below for ready reference:

> "First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.
>
> "Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute."

The Board has reviewed your reference to the case of McNulty vs. National Mediation Board 18 F. Supp. 494 (N.D.N.Y., 1936) contained on pages 4, 5 and 6 of your

letter. Your quotation from the decision of the District Court omits reference to the fact the National Mediation Board was removed as a party to this case during the Court proceedings. The Judge's opinion contained the following statement not quoted in your letter:

> "The National Mediation Board not being a party to this suit, the Court can make no order directly affecting that Board. ***** The conclusion then is that no party is entitled to affirmative relief. The complaint and the cross complaints are all dismissed without cost to any party against any other party."

It will be observed that the decision of the Court in the *McNulty* case in no way ordered discontinuance of the form of ballot customarily used by this Board. Since the Board's certification in that case was not set aside, the comment of the Court on the form of ballot must be regarded as *obiter dictum*. The *McNulty* case has never been considered by the National Mediation Board as controlling the Board's functions or practices under the Railway Labor Act.

In light of the above, this Board sees no reason to deviate from its customary form of ballot in the current dispute, and it will be used by the mediator in conducting the election in NMB Case No. R-3590.

By direction of the NATIONAL MEDIATION BOARD.

E. C. Thompson
Executive Secretary

cc-to: Mr. G. M. Harrison
Mr. A. J. Hayes
Mr. Wm. F. J. Klatte

Exhibit 15

UNITED AIR LINES

1200 Algonquin Road, Elk Grove Township, Illinois.
Mailing Address: P.O. Box 8800, Chicago 66, Illinois
Telephone 625-1400
Executive Offices

February 1, 1963

Mr. Leverett Edwards
Chairman
National Mediation Board
Washington, D. C.

Dear Mr. Edwards:

We have the Board's letter of January 24, NMB Case No. R-3590, in reply to our letter of January 18 on the form of ballot being used by the National Mediation Board. We appreciate the Board's furnishing us with a summary of its practices in holding representation elections.

We understand your letter to say that if the Board used a ballot that allows employees to express a desire to remain unrepresented, this would somehow circumvent a mandate of Congress that employees shall be represented. In short, employees must be represented by a union or other organization or individual. In other words, it has been the view of the Board that the purposes of the Act would be defeated by carriers treating separately with individual employees and that therefore employees are not given freedom to express a choice in a Mediation Board election between being represented or remaining unrepresented. Rather, the Board has limited employee voting to a determination of who shall be designated as the representative of the employees in the appropriate class or craft—and not whether there shall be any representative at all. Please advise us if this does not correctly reflect the Board's policies and practices.

We appreciate that the Board's position stems from the adoption of the present form of ballot in 1934, well before the appointment of the present members of the Board. We think, however, that the present Board should re-examine its position to see whether it is based upon a proper interpretation of the Railway Labor Act in light of the facts in this case. Stated in another way, irrespective of the type of ballot used by the Board in other elections, the facts of this election justify Mediation Board action to use a ballot which gives employees an opportunity to indicate whether they do or do not want union representation. In the forthcoming election, there are approximately 9,700 employees eligible to vote who are not now and never have been represented by a labor organization. These employees, together with 3,000 of our organized employees, will be eligible to participate in the largest single airline employee representation election ever held by the National Mediation Board since the airlines were placed under the Railway Labor Act.

The Board has said that in instances where the employees are not represented, the representation dispute is between the employees who desire representation on the one hand and the employees who do not desire representation or who are indifferent on the other. As the Board stated in its Twenty-Seventh Annual Report, p. 37:

> ". . . in a dispute where employees are seeking to designate a representative for the first time the dispute is between those who favor having a representative as opposed to those who are indifferent or are opposed to having a representative for the purpose of the act."

Especially in this case, where such a large number of presently unrepresented employees are involved in the election, it seems entirely appropriate that such employees have an opportunity to indicate a desire to maintain their present status. Contrariwise, it seems entirely improper that the employees who may not want to be represented or

who are indifferent—whom the Board recognizes as one of the parties in a representation dispute among unorganized employees—should be offered an election procedure which fails to provide a way to express a choice to remain unrepresented.

The Board's present form of ballot concerns United because it may thwart the desire of the majority of an unrepresented craft or class to remain unrepresented, if that is their desire. The purpose of the Act to promote stable labor relations will not be effectuated by forcing an unwilling majority of employees in a craft or class to have their rates of pay and working conditions established through a process they do not want. A contrary result may well be reached.

Section 2, Fourth, of the Railway Labor Act is the section of the Act which relates directly and specifically to the employees' right to organize and bargain collectively. It provides that:

> "Employees shall have the *right* to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act." (Emphasis supplied.)

The Board's election procedure clearly recognizes the right of a majority of a craft or class to organize and bargain collectively if it chooses to exercise that right. There is, however, a large gap between recognizing the existence of a right and making the exercise of that right a mandatory requirement—which is in effect what the Board's voting procedures do. In fact, compelling employees to organize and bargain collectively effectively abridges the employees' right granted them in Section 2, Fourth. A right is no longer a right when one is compelled to exercise it but is transformed into a duty. Such a transformation obviously is contrary to the language of the Act and the Congres-

sional intent. Section 2, Fourth, properly leaves the initiative in determining whether to organize and bargain collectively to the majority of the employees of the craft or class. That initiative is improperly removed from the employees by election procedures which assume—prior to an election—that the choice available to them is only a choice between representatives.

The provisions of the Railway Labor Act upon which the Board bases its election policy and practices do not sustain the Board's interpretation. The Board's conclusion that there is a "mandate of Congress" that representatives be designated by employees apparently is based on Section 2, First and Second, quoted in the Board's letter. Section 2, First and Second, however, do not deal with the question of whether employees shall be represented or, if they do, how they designate their representative. This function is performed by Section 2, Fourth, of the Act, which, as we have already shown, clearly contemplates that the employees themselves can choose whether or not they want to be represented. Section 2, Ninth, which empowers the Board to establish its election procedures, merely gives to the Board authority to provide the proper mechanics to determine whether the majority of the employees desire to exercise the right to organize and bargain collectively guaranteed to them by Section 2, Fourth. In other words, the Board's election procedures cannot properly exceed the scope of Section 2, Fourth, and compel organization contrary to the wishes of the majority.

If the Congress intended that the Railway Labor Act require employees to be represented, that mandate would have appeared in Section 2, Fourth, of the Act, which is specifically concerned with the matter of employee organization and representation. It would be extremely unlikely that a matter so important as a Congressional mandate that employees shall be represented would be found by implication in a section of the Act which does not by its

language even refer to the matter of representation. The language of Section 2, Second, also relied on by the Board, is easily reconcilable with the recognition of a right by employees to deal with a carrier as individuals rather than through collective bargaining representatives. Obviously, Section 2, Second, which provides that "All disputes between a carrier . . . and its employees . . . shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute" becomes applicable only after the employees and the carrier have designated and authorized representatives. When employees deal with a carrier as individuals, the conference procedure contemplated by Section 2, Second, is simply inapplicable. This is shown by the testimony before the House Committee on Interstate and Foreign Commerce of Commissioner Eastman, draftsman of the 1934 Amendments to the Railway Labor Act. Commissioner Eastman stated that it was not the purpose of the bill which was eventually enacted into law to coerce organization or to require collective bargaining on the part of the employees. Rather, as Commissioner Eastman stated:

> "If the employees do not wish to organize, prefer to deal individually with the management with regard to these matters, why, that course is left open to them, or it should be."

The legislative history of the 1934 Amendments to the Railway Labor Act shows conclusively the Board's present procedures are in direct conflict with the intent of the Congress. It was for that reason that we made several references to the legislative history in our letter of January 18. We know that the Members of the National Mediation Board like the members of any other administrative agency, would not wish to continue a policy which is in conflict with the intent of Congress in the law under which the agency is established and operates. We would, therefore, appreciate

the Board's comments on this history since this point was not answered in the Board reply to United dated January 24.

The Board's reply to our letter of January 18 notes that the *McNulty* Case did not order discontinuance of the form of ballot customarily used by the Mediation Board since the Mediation Board was removed as a party to this case during the court proceedings. We did not cite the *McNulty* Case as support for the proposition that the Board was ordered by the court to stop using its customary ballot. Our point in raising the *McNulty* Case, which we believe is clear from our letter, is that the court in the *McNulty* Case recognized that the form of election ballot presently used by the National Mediation Board does not permit a true expression of employee sentiment. In fact, the court in the *McNulty* Case considered and rejected the interpretation of the Railway Labor Act that the employees must have representation for collective bargaining. Thus, the court stated:

> "The issue, of course, as the mediator admittedly found, was whether the men desired to continue under the individual contract method or the National Union representation.
>
> •••
>
> "But the employees had no opportunity to express a choice between these methods. They were in effect told that they must have representation for collective bargaining and were asked to elect between the National Union (O.R.T.) and an unknown.
>
> •••
>
> "In short, the ballot is an artificial thing in no wise disclosing which method of contracting the majority wish, but merely shows that, if they must have collective bargaining, they preferred the O.R.T. to some unknown person or organization."

The fact that the National Mediation was, by consent of the parties, dismissed from the suit as a party defendant does not erase the fact that the Board's form of ballot was

found by the court to be improper because it did not afford the employees an opportunity to truly express their will.

The balloting policies of the Mediation Board are in striking contrast to those followed by the National Labor Relations Board. The thrust of these sister statutes—the Railway Labor Act and the National Labor Relations Act—has been judicially found to be the same. The National Labor Relations Board, however, has adopted a form of election ballot which gives to employees the right to express their choice as to whether they do or do not want representation. On the other hand, the National Mediation Board has adopted a form of election ballot which effectively denies the employees that right. The completely contrary election procedures used under these companion laws cannot be reconciled.

United Air Lines renews the pleas of Mr. W. A. Patterson's letter of January 22 to the Board. The Mediation Board is urged to review its election procedures with the Attorney General of the United States and the Secretary of Labor to determine whether the Board's present policy and practices are consistent with the intent of Congress and the national labor policy.

Sincerely yours,

/s/CHARLES M. MASON
Charles M. Mason
Senior Vice President—Personnel

cc: Honorable Robert F. Kennedy
Attorney General
Honorable W. Willard Wirtz
Secretary of Labor

Exhibit 16

NATIONAL MEDIATION BOARD
Washington

February 7, 1963
Case No. R-3590

Mr. Charles M. Mason
Senior Vice President
United Air Lines, Incorporated
P. O. Box 8800
Chicago 66, Illinois

Dear Mr. Mason:

Acknowledgement is made of your letter of February 1, 1963, to Chairman Edwards, on the subject of NMB Case No. R-3590.

The Board sees no useful purpose to be served by continuing the exchange of correspondence concerning the views of United Air Lines, Inc. on the various aspects of the handling of this case. We will, however, comment briefly on two points made in your letter. As stated in our letter of January 24, 1963, it is the Board's view that the Congress intended that the purposes of the Railway Labor Act, expressed in Section 2(1), General Purposes, and Section 2, First and Second, should be effectuated through collective bargaining between carriers and their employees, through duly designated and authorized representatives. Decisions of the United States Supreme Court support this view.

In its Decision No. 324, October term 1936, in the case of the Virginian Railway Company vs. System Federation No. 40, Railway Employees Department of the American Federation of Labor, etc., et al., the Court said, referring to Section 2, Third, of the Railway Labor Act:

> "Under the last mentioned provision this court held, in the *Railway Clerks* case, supra that employees were free to organize and make choice of their representatives without the 'coercive interference' and 'pressure'

of a company union organized and maintained by the employer; *and that the statute protected the freedom of choice of representatives, which was an essential part of the statutory scheme,* with a legal sanction which it was the duty of courts to enforce by appropriate decree." (Emphasis supplied)

In the same decision, the Court stated:

"Petitioner argues that the phrase 'treat with' must be the equivalent of 'treat' in its intransitive sense, as meaning 'regard' or 'act towards' so that compliance with its mandate requires the employer 'to meet with the authorized representative of the employees only if and when he shall elect to negotiate with them'. This suggestion disregards the words of the section *and ignores the plain purpose made manifest throughout the numerous provisions of the Act. Its major objective is the avoidance of industrial strife, by conference between the authorized representatives of employer and employee.*" (Emphasis supplied)

Again, in the Supreme Court's Decision No. 112 and 1023, 1940 term, March 4, 1942, in the case of Williams, etc., et al. vs. Jacksonville Terminal Company; Pickett, etc. vs. Union Terminal Company, the Court said:

"The object of the Act is to avoid interruption to commerce through *the promotion of free association among employees for the purposes of settling disputes between them and the carriers* ***** These additions (Section 2, Seventh, and Section 6) *point squarely to limiting the bargaining provisions of the Railway Labor Act to collective action.*" (Emphasis supplied)

On Page 2 of your letter you state:

"The Board's present form of ballot concerns United because it may thwart the desire of the majority of an unrepresented craft or class to remain unrepresented, if that is their desire. The purpose of the Act to promote stable labor relations will not be effectuated by forcing an unwilling majority of employees in a craft or class to have their rates of pay and working condi-

tions established through a process they do not want. A contrary result may well be reached."

You apparently do not have a clear understanding of the Board's election procedures. Succinctly state, they are: to have a valid election under Section 2, Ninth of the Act, a majority of the employees in the craft or class must cast valid ballots, i.e., ballots for a recognizable organization or an individual not an officer of the carrier. In such a situation, a majority of the valid ballots cast will elect a representative. If no organization or individual receives a clear majority of valid ballots cast, or if less than a majority of eligibles cast valid ballots, there is no election. In the event a majority of eligibles cast valid ballots, and votes are cast for three or more organizations or individuals, and no one receives a majority of the total valid ballots cast, Rule 1206.1 of the Board's rules applies. The situation of "forcing an unwilling majority, etc." is not possible under the above rules and procedures.

The comments on the *McNulty* case made in our letter of January 24, 1963, need not be restated here.

The laws governing this Board and the National Labor Relations Board differ in many respects. The form of ballot used by the NLRB is adapted to the law under which that agency operates. The same applies to the ballot used by the National Mediation Board. We wish to remind you that this Board is an independent agency in the Executive Branch of the Government reporting directly to the Congress. Consultations such as suggested in the last paragraph of your letter are neither necessary nor appropriate.

The Board will proceed with an election among the employees concerned in NMB Case No. R-3590, under the Board's usual policies and procedures in such cases.

By direction of the NATIONAL MEDIATION BOARD.

E. C. THOMPSON
Executive Secretary

Exhibit 17

UNITED AIR LINES

1200 Algonquin Road, Elk Grove Township, Illinois
Mailing Address: P.O. Box 8800, Chicago 66, Illinois
Telephone 625-1400
Executive Offices

February 11, 1963

Mr. E. C. Thompson
Executive Secretary
National Mediation Board
Washington, D. C.

Dear Mr. Thompson:

We acknowledge receipt of your letters dated February 4 and February 7, 1963, denying United's request that a public hearing be held in Case R-3590 to permit submission of evidence to the National Mediation Board, upon which the Board could base a determination of the proper grouping of employees for purposes of a representation election, and denying our request to change the form of ballot used by the Board.

You stated that United has not furnised the Mediator a list of employees involved and request that United prepare and furnish such a list. We cannot agree with this statement because United did furnish a list of employees to the Mediator on November 27, 1962. A subsequent request for an additional list was also made by the Mediator and, to date, that request has not been complied with.

We believe the Board's refusal to permit United to be a party and to hold a hearing is a denial of the minimal constitutional requirements of due process. We, therefore, plan to institute legal proceedings seeking an appropriate court order requiring the Board to provide for a proper hearing and to change the form of ballot in Case R-3590.

Pending the outcome of such litigation, United respectfully declines to prepare and furnish the additional list re-

quested. If, in the meantime, the Board wishes to exercise its statutory authority to make copies of relevant "books and records" of the Company, we will make them available to the Board's representative at our Executive Offices.

Very truly yours,

/s/ C. M. MASON
C. M. Mason
Senior Vice President—Personnel

cc: Mr. G. M. Harrison
Mr. A. J. Hayes
Mr. W. F. J. Klatte
Hon. Robert F. Kennedy, Attorney General
Hon. W. Willard Wirtz, Secretary of Labor

Exhibit 19

January 24, 1963

E. C. Thompson
Executive Secretary
National Mediation Board
1230 - 16th St., N. W.
Washington 25, D. C.

Dear Mr. Thompson:

This letter is to confirm our telegram to you of January 23, 1963 requesting an open hearing on the craft or class determination for representation Case R-3590. A copy of our telegram is enclosed herewith. We are taking the liberty of forwarding a copy of the letter and enclosed telegram to Mr. W. A. Patterson, President of UNITED AIR LINES, and Senator Warren G. Magnuson.

Since sending the telegram we have contacted or been contacted by groups of employees of UNITED AIR LINES in Los Angeles, San Francisco, Portland, Salt Lake City, Boise, and can state that their feelings are identical as ours

on this issue. We are speaking for over 1,200 people on the West Coast alone.

Today we were informed by the San Francisco employees that they have been contacted by Customer Service employees in other cities on the UAL system including Salt Lake City, Denver, Kansas City, Chicago, Detroit, Philadelphia, Omaha and Pittsburgh, who expressed an identical view.

We earnestly repeat our request for an open hearing where we can make a detailed presentation of the reasons why it would be unreasonable and undemocratic to have an election with the voting class or craft including such different elements and interests as the one presently being proposed.

Very truly yours,
/s/ GEORGE W. JANSEN
Instructor Passenger Service

GWJ: jm
att.
cc: W. A. Patterson, President UAL
Senator Warren G. Magnuson

956P PST JAN 23 63
SEATTLE WASH 23

E. C. THOMPSON
EXECUTIVE SECRETARY
NATIONAL MEDIATION BOARD
1230 SIXTEENTH ST NORTHWEST WASH DC

DEAR SIR:

THE UNDERSIGNED SPEAKING FOR THEMSELVES AND FOR 170 OTHER EMPLOYEES IN THE CUSTOMER CONTACT CLASSIFICATION OF UNITED AIR LINES IN THE SEATTLE AREA, HEREBY FORMALLY REQUEST THAT THE NATIONAL MEDIATION BOARD HOLD OPEN HEARINGS TO DETERMINE THE PROPER CLASS/OR CRAFT FOR REPRESENTATION CASE R-3590. THE UNDERSIGNED, ED., BELIEVE ON ACTUAL INFORMATION THAT THEY EXPRESS THE WISHES OF HUNDRED OF UNITED AIR LINES EMPLOYEES IN SIMILAR EMPLOYMENT CATEGORIES IN OTHER CITIES. THE UNDERSIGNED BELIEVE THAT CUSTOMER SERVICE EMPLOYEES CONSTITUTE A DISTINCT CRAFT OR CLASS IN UNITED AIR LINES'

SYSTEM, AND STRONGLY BELIEVE THAT THEY SHOULD NOT BE REPRESENTED BY THE SAME BARGAINING AGENT THAT SPEAKS FOR SUCH TOTALLY DIFFERENT TYPES OF PERSONNEL AS RAMP, AND STORES EMPLOYEES.

PLEASE ADDRESS YOUR RULING ON THIS DEMAND FOR HEARING TO THE UNDERSIGNED, CARE OF GEORGE W. JANSEN AT 2807 - 31ST AVENUE, SEATTLE 99, WASHINGTON. WE UNDERSTAND THAT UNDER THE RULES AND REGULATION OF THE N.M.B. NO OTHER FORMALITIES ARE REQUIRED OF A PARTY TO A REPRESENTATION CASE TO INVOKE A HEARING OTHER THAN A WRITTEN REQUEST SUCH AS THIS TELEGRAM. IF YOU PRESCRIBE ANY ADDITIONAL FORMALITIES TO BRING ABOUT A HEARING, WE ASK YOU TO ADVISE US WHAT THEY ARE AT YOUR EARLIEST CONVENIENCE AND WE WILL PROMPTLY COMPLY.

GEORGE W. JANSEN
INSTRUCTOR PASSENGER SERVICE

SAM N. KONTOS
AGENT, PASSENGER SERVICE

DICK WHITNEY
AGENT, RESERVATIONS

Exhibit 20

February 11, 1963

Mr. Leverett Edwards, Chairman
National Mediation Board
Washington 25, D. C.

Re: Case R-3590

Association For The Benefit
of Non-Contract Employees

Dear Sir:

We submit herewith on behalf of the Association For the Benefit of Non-Contract Employees and the five undersigned individuals a Petition for Relief before the National Mediation Board as follows:

1. The petitioners herein and the Association For The Benefit of Non-Contract Employees, as of this date, represent 5100 employees, in the Customer Contact and office

and clerical group, of United Air Lines. This representation is evidenced by signed representation cards from each of said employees.

2. The petitioners hereby apply for leave to intervene in National Mediation Board Representation Case R-3590, as a party in interest on behalf of the 5100 employees who have appointed the petitioners. In addition to being granted permission to intervene, the undersigned do further request the following specific action from the National Mediation Board.

(a) That the pending election in case R-3590 be deferred until there be a re-determination of the class or craft of employees to be involved in the election.

(b) That the National Mediation Board, basing its action on information already before it, make a re-determination of the employees presently in the bargaining unit into three groups comprised of:

1. Office and clerical employees.

2. Customer contact employees.

3. Ramp and stores employees.

each of which should be determined to be a separate class or craft for purposes of this representation case and for future representation proceedings involving these employees.

(c) In the event that insufficient facts are presently on file or if the Board declines to re-determine the class and craft on its own motion, the undersigned hereby petition the National Mediation Board to fix a time and place for a hearing, at which petitioners and all interested parties and persons may present evidence, argument and authorities bearing on that issue; and that on the evidence thus presented, the National Mediation Board re-determine the class and craft as requested.

(d) In addition to the foregoing and notwithstanding the ultimate determination of class and craft of the National Mediation Board in Case R-3590 petitioners hereby request the National Mediation Board to prepare and use in this representation election, a form of ballot which provides on its face, a place for employees to vote affirmatively that there be no bargaining agent elected to represent their class or craft. This request is based on National Mediation Board practice of using ballots which provide the voter only the opportunity of choosing between bargaining agents.

(e) In the event that the National Mediation Board declines to use a ballot as requested, (i.e. a ballot providing a place for a "no-union" vote), then petitioners request the Board to issue a statement to petitioners, in advance of the election, explaining how a voter may register as his choice that no union be certified to represent him.

3. The request for re-determination of the class and craft is based upon numerous reasons, including the following, each of which will be proved by petitioners with appropriate evidence and authority in the event of a hearing. (1) The class and craft heretofore established by the National Mediation Board for this election includes approximately 12,500 employees of United Air Lines in widely different job categories. There is no history of collective bargaining common to these diverse groups. In fact, one group (ramps and stores) is presently unionized, while the others (customer contact and office and clerical) have never been unionized in the system. (2) Determination of customer contact and office and clerical employees to be separate classes and crafts is easily accomplished because they are readily identifiable units under both company personnel procedures and nature of work performed. (3) The National Mediation Board determination in R-1706, January 31, 1947 was prior to the significant post war operational developments of the airlines industries. These developments show that office and clerical, ramp and stores employees and cus-

tomer contact employees are separate classes and crafts and should be treated as such. (4) The employees in these classes and crafts do not desire to be joined in one bargaining unit. (5) There is widely different job-training in the different job categories. (6) The nature of their work is significantly different. (7) There is no aspect of interchangeability of personnel between the different job classifications. (8) Vital interests of each category prevents fair representation of all three groups by one bargaining agent without a serious conflict of interest or a potential conflict of interest.

Copies of this petition are being sent to the Brotherhood of Railway Clerks, International Association of Machinists and United Air Lines. It is requested that all communications regarding this petition be sent to the undersigned in care of the Association For the Benefit on Non-Contract Employees, 244 Kearny Street, San Francisco, California.

Respectfully submitted,

/s/ James K. Lamona
/s/ Ralph C. Johnson
/s/ Phyllis Ruffner
/s/ Patricia S. Leahy
/s/ Helen M. Crisman

Association For The Benefit
of Non-Contract Employees

By
/s/ James F. Sheahan
President (SEAL)

Exhibit 21

San Jose 29, California
February 25, 1963

Mr. E. C. Thompson
Executive Secretary
National Mediation Board
Washington 25, D. C.

Dear Mr. Thompson:

Attached is a letter from the Association for the Benefit of Non-Contract Employees that has been directed to all Senators and the Representatives who have evidenced an interest in our case (R-3590). We sincerely believe that our cause is just, and of course are seeking aid from many sources. I feel it only fair that you have a copy of the letter so that if any questions are directed to your office, you will have the proper background.

Mr. Tracy, I believe, had asked at our last meeting for the address of the company that processed our IBM run. It is, Data Computing Corporation, 105 Montgomery Street, San Francisco, California, Attn: Mr. Wright. We are still actively campaigning for memberships, and to date have in excess of 6,000 signed cards from non-contract employees. We hope to be able to complete our IBM tally by the end of this week; upon completion, the remainder of our petition cards will be forwarded to you.

I would also like to take this opportunity, in behalf of myself and the officers and directors, to thank you most sincerely for your kind reception at our meeting of February 14. Considering the time in which we had to obtain the required membership percentage, your patience is most appreciated.

I believe that you have been in contact these past few weeks with Mr. Richard Harrell, our Washington member of the Association's Board of Directors, and I am request-

ing by copy of this letter that he keep you informed as to our activities and progress. However, if you should need any further information from our West Coast headquarters, please do not hesitate to call or wire collect to my home address; or you may call or wire collect to Mr. Ralph Johnson, 1221A Laguna Avenue, Burlington, California; DI 3-2393 (Area Code 415).

Thank you again, sir, for your time and assistance.

Sincerely,
JAMES F. SHEAHAN, *President*

February 23, 1963

The Honorable
Office Building
Washington 25, D.C.

Dear

As you are undoubtedly aware, the Brotherhood of Railway Clerks has filed a petition (Case R-3590) before the National Mediation Board, seeking to represent some 12,700 employees of United Air Lines as their bargaining agent.

Most of the employees became aware of the petition as the result of a letter sent to all employees by by Mr. C. M. Mason, Senior Vice-President of Personnel of United Airlines, On January 15, 1963.

For the majority of us, especially among the 9,700 not now under contract, the petition came as a complete surprise. To date, at least 60% of this non-contract group have indicated that they do not wish to be represented by a labor union; but the rules by which the potential election will be held deny us the right to say we do not want union representation.

Employees scattered throughout United's 28,000 mile system began to protest individually to the NMB, to members of Congress, and to various Government agencies. Replies were directed to these same employees, stating that their

individual protests did not prove that a majority did not wish representation. Through trial and error; through efforts to seek information from sources that could not, or would not, give us the help we needed; through efforts of individual employees, we ultimately began to learn a little more about the situation facing us. Finally, some employees of our Seattle office solicited aid from Mr. Thomas Pelly of the First Congressional District of Washington. Mr. Pelly arranged a meeting with Mr. E. C. Thompson, Executive Secretary of the National Mediation Board, on January 28, 1963, so that we might find out what to do in order to legally intervene in the case. Twenty-nine employees from various stations of United Airlines' system attended this interview. Mr. Thompson, in effect, stated that in order to protest before the Board we had to represent at least 35% of the eligible electorate; the twenty-nine employees represented only themselves. With this information, we returned to our stations; and on our own time, and at our own expense, we sought a way to unify the many employees into a cohesive unit and thus be able to rightfully intervene in Case R-3590.

Our concerted effort began on January 29. On January 31, the group incorporated in San Francisco under the laws of the State of California; the organization is known as the Association for the Benefit of Non-Contract Employees (ABNE), and represents the unorganized clerical and customer contact personnel. With the advent of the corporation, petition cards were drawn up, printed, and dispensed throughout our system. Within two and one-half weeks, our membership numbered 5,500. The figure increases each day; we expect to reach a membership of 7,000.

When the membership numbered 5,500, or nearly 45% of the total electorate, the officers of the corporation, accompanied by legal counsel, went to Washington. On February 14, 1963, we presented to the National Mediation Board a formal petition for relief. Mr. Thompson accepted the petition on behalf of the Board members, and advised us that the petition would be reviewed when the Board next met. As of this writing, a decision is still pending.

It has been stated before that we are not anti-union and this holds true. We are non-union in belief; there is a vast difference in meaning. Unions today are necessary, but they are necessary only within certain areas of the labor population. Most of us have had college training, some have been trained in specialized schools, and all have had extensive on-the-job training. We are frankly proud of our jobs and our ability to perform in them. It means more to us to be recognized on our merit, incentive, and initiative than it does to achieve our progress solely on the basis of longevity.

For this reason, the Association was formed: we wish to remain unorganized. In our petition placed before the NMB, we are seeking an open hearing wherein a separation of three classes and crafts can be properly determined within the confines of United Airlines company structure:

1. Customer Service or Public Contact (unorganized)
2. Office and Clerical (also unorganized)
3. Ramp and Stores (organized under the IAM)

The hundreds of jobs performed by employees in these three categories are in no way related; job classifications range from technical computer programmers to cabin cleaners. They are very rarely interchangeable, and it is inconceivable that all could and would be grouped into one bargaining unit. Yet the laws of the National Railway Labor Act state that these groups are related and properly classified.

The Association is also petitioning for a "No Union" vote to be placed on the NMB ballot. The ballot used does not provide for a "No" vote; it merely provides the voter a choice of unions. There is no way for him to state that he does not wish to be represented. The only way a voter can vote "No" is to destroy his ballot; to throw it away. This is a negative action, at best. This in itself is undemocratic as it denies us our constitutionally guaranteed right to protest.

The laws of the National Railway Labor Act that guide the decisions of the Mediation Board are obsolete. They were enacted 30 years ago for an industry that bears no resemblance whatsoever to the airline industry, other than that both are public passenger carriers. In almost 30 years of interpreting these laws and handing down decisions, the NMB, as a quasi-judicial body, has seldom, if ever, been challenged in a ruling.

The Association for the Benefit of Non-Contract Employees is attempting to establish a precedent, and we deeply believe that our efforts, and our cause, are justifiable. The technological advances in our industry over the past 30 years, as in all industries, defy comparison. We cannot be so indifferent as to fail to protest these laws remaining as once constituted, and yet still applying to society as we know it today. Even management has recognized these changes, and has acknowledged its responsibility to the employee by consistently improving working conditions and increasing benefits—even among the non-contract employees.

United Airlines personnel are among the highest paid in the industry within our job classifications; we enjoy among the best of fringe benefits. How can one believe that collective bargaining would benefit the United employees, when our company, in this respect, is one of the leaders in the industry?

We are in need of, and actively seek your assistance.

Perhaps through your intervention can our voices be heard. We wish to effectively perform our duties as we have been taught to do them and be recognized for our efforts as individuals. If United Airlines, as one voice in this great and dynamic industry, is drowned in the sea of bargaining disputes it will have a telling effect on the entire industry for years to come. Do you wish to see the air transportation industry decline as we have seen the railroad and maritime industries decline? We sincerely hope not.

Your consideration and assistance will be deeply and gratefully appreciated.

Sincerely and Respectfully,

/s/ JAMES F. SHEAHAN
James F. Sheahan, President
Association for the Benefit
of Non-Contract Employees

JFS/hc

P.S. Perhaps to answer some unasked questions, these points should be made clear:

1. We are not seeking recognition as a bargaining agent; we do not want our name on the ballot.
2. We have no intention of becoming a Company union.
3. We are not sanctioned, recognized, or assisted in any way by United Airlines management.
4. Our Association will be dissolved after such time as it has served its purpose.

Exhibit 22

PD F-MD NATIONAL MEDIATION BOARD 3:43 p.m. 4-12-63

ALEX ARGUELLO
KEIL BUILDING
244 KEARNY STREET
SAN FRANCISCO, CALIFORNIA

BOARD HAS TODAY CAREFULLY CONSIDERED LETTER DATED APRIL 3, 1963, SIGNED BY JAMES F. SHEAHAN AND OTHERS ADDRESSED TO CHAIRMAN EDWARDS RE CASE R-3590, REQUESTING RECONSIDERATION OF BOARD DECISION DATED MARCH 27, 1963, DENYING PETITION OF ASSOCIATION FOR THE BENEFIT OF NONCONTRACT EMPLOYEES SUBMITTED ON FEBRUARY 11, 1963. NATIONAL MEDIATION BOARD FINDS NO GOOD AND SUFFICIENT REASON TO DEPART FROM ITS PREVIOUS DECISION AND REQUEST OF APRIL 3, 1963 IS THEREFORE DENIED. BY DIRECTION OF NATIONAL MEDIATION BOARD.

E. C. THOMPSON
EXECUTIVE SECRETARY
NATIONAL MEDIATION BOARD

OFFICIAL BALLOT

NATIONAL MEDIATION BOARD
(AN AGENCY OF THE U. S. GOVERNMENT)
CASE No. R-3590
CLERICAL, OFFICE, STORES, FLEET,
AND PASSENGER SERVICE EMPLOYEES
UNITED AIR LINES, INC.
April 22, 1963 to May 22, 1963

(Purpose of Election and Instructions for Voting by U. S. mail explained on Reverse Side)

If you desire to be represented by AIR TRANSPORT DIVISION, BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES, AFL-CIO	If you desire to be represented by AIRLINE DIVISION, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO.
Mark an "X" in this square ☐	Mark an "X" in this square ☐

If you desire to be represented by — ANY OTHER ORGANIZATION OR INDIVIDUAL
Write name of such organization or individual in space below and mark an "X" in this square

_____ ☐

This is a SECRET BALLOT Do not sign your name	Marks in more than one square will make ballot illegal

Return this ballot in its entirety. Do not cut, mutilate or otherwise spoil it. If you do so, return ballot at once to the Mediator and obtain a new one.

Exhibit No. 23

PURPOSE OF ELECTION

A dispute exists among the craft or class of employees named on the reverse side of this ballot as to who are the representatives of such employees designated and authorized in accordance with the requirements of the Railway Labor Act, and the National Mediation Board (an agency of the U. S. Government) is taking a SECRET BALLOT in order to ascertain and to certify the names or name of organizations or individuals designated and authorized to act as representatives for the purpose of the Act.

INSTRUCTIONS FOR VOTING BY MAIL

An official ballot, a SECRET "A" envelope, and a return addressed mailing envelope (no postage required) are enclosed herewith. To vote by mail, carry out the following instructions:

Mark an "X" in the square of your choice, fold and place the ballot in the SECRET envelope marked "A", seal the envelope without placing any mark of identification thereon. After sealing the envelope marked "A", place it in the mailing envelope marked "BALLOT" and seal; then PLACE YOUR NAME AND ADDRESS IN THE UPPER LEFT-HAND CORNER OF THE MAILING ENVELOPE MARKED "BALLOT". Deposit this envelope, which requires no postage, in the U. S. Mail so as to reach the Post Office in Chicago, Illinois, **not later than 5:00 P. M., May 22, 1963.**

After the mailing envelope has been checked against the eligibility list, that envelope will be destroyed and the SECRET "A" envelope will then be mixed with other SECRET "A" envelopes before being opened by Mediator, thus insuring complete secrecy.

YOUR BALLOT CANNOT BE COUNTED UNLESS YOU PLACE YOUR NAME AND ADDRESS ON THE MAILING ENVELOPE.

Exhibit 23 (page 2)

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Exhibit 24

PENNSYLVANIA SYSTEM MACHINISTS' APPRENTICES', AND HELPERS' OFFICIAL BALLOT

A dispute exists between the carrier and System Federation No. 90 of the Railway Employees' Department of the A.F. of L. as to who the employees in the craft above named desire to be represented by in the conference to negotiate rules and working conditions.

The machinists, apprentices, and helpers, irrespective of membership or non-membership in any organization, are therefore to be given an opportunity to designate, by a majority vote, the representation of their choice, as follows:

Those in favor of either of the following will designate their choice by marking an X in the square set out for that purpose.

Those who desire to be represented by System Federation No. 90, Railway Employees' Department of the A.F. of L., mark an X in this square _____ ☐

Those who desire to be represented by the American Federation of Railroad Workers, mark an X in this square _____ ☐

Those who desire to be represented by individuals or by any other organization, write the name of such individual or organization here _____

_____

and mark an X in this square _____ ☐

Place employed _____

Craft _____

Actually working _____

Laid off or furloughed _____

Name of voter _____

Exhibit 25

LONG ISLAND RAILROAD COMPANY CROSSING WATCHMEN

OFFICIAL BALLOT

A dispute exists between the carrier and the United Brotherhood of Maintenance of Way Employees and Railway Shop Laborers as to whom the crossing watchmen desire to be represented by in conference to negotiate rules and working conditions.

The crossing watchmen, irrespective of membership or nonmembership in any organization, are to be given an opportunity to designate by a majority vote the representatives of their choice as follows:

Those in favor of either of the following will designate their choice by marking an X in the square set out for that purpose:

Those who desire to be represented by the Long Island Railroad Crossing Watchmen's Association, mark an X in this square _____ ☐

Those who desire to be represented by the United Brotherhood of Maintenance of Way Employees and Railway Shop Laborers, mark an X in this square _____ ☐

Those who desire to be represented by individuals or by any other organization, write the name of such individual or organization here _____

_____

and mark an X in this square _____ ☐

Exhibit 26

OFFICIAL BALLOT
of
MECHANICAL DEPARTMENT EMPLOYEES OF THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

June 4 - 18, 1934

Dispute exists with respect to representation of the Mechanical Department employees as to whether a majority desire representation by the Association of Mechanical Crafts, Helpers and Apprentices, D. & R. G. W. R. R., or desire representation by System Federation No. 10, Railway Employees' Department, American Federation of Labor, and it has been agreed that a secret ballot be taken to determine the fact.

IF YOU DESIRE REPRESENTATION BY THE ASSOCIATION OF MECHANICAL CRAFTS, HELPERS AND APPRENTICES, D.&R. G. W. RR., MARK AN "X" IN THIS SQUARE _____ ☐

IF YOU DESIRE REPRESENTATION BY SYSTEM FEDERATION NO. 10, RAILWAY EMPLOYEES' DEPARTMENT, AMERICAN FEDERATION OF LABOR, MARK AN "X" IN THIS SQUARE ☐

IF YOU DESIRE REPRESENTATION BY ANY OTHER ORGANIZATION OR INDIVIDUAL, WRITE IN NAME AND MARK AN "X" IN THIS SQUARE _____ ☐

(The writing of more than one X will make the ballot illegal)

DO NOT SIGN YOUR NAME

Exhibit 27

OFFICIAL BALLOT
of
SHEET METAL WORKERS, HELPERS AND APPRENTICES

employees of

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILOAD CO.

R-2962

June 1956 to July 1956

A dispute exists among the above named craft or class of employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of the Railway Labor Act, and the National Mediation Board is taking a SECRET BALLOT in order to ascertain and to certify the name or names of organizations or individuals designated and authorized as representatives for purposes of the Act.

INSTRUCTIONS FOR VOTING

Mark an "X" in the square of your choice. Marks in more than one square make ballot void.

If you desire to be represented by:

SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION

(Functioning through System Federation No. 76, Railway Employes' Department, AFL)

Mark an "X" in this square _____ ☐

If you desire to be represented by:

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE USA AND CANADA OF AF of L

Mark an "X" in this square _____ ☐

If you desire to be represented by:,

ANY OTHER ORGANIZATION OR INDIVIDUAL

Write name of such organization or individual on the line below,

_____ AND,

Mark an "X" in this square _____ ☐

NOTICE

1. This is a SECRET BALLOT: Do not sign your name.
2. Return this ballot in its entirety. Do not cut, mutilate or otherwise spoil it. If you do so, return ballot at once to the Mediator and obtain a new one.

Exhibit 28

NATIONAL MEDIATION BOARD
Washington

Case No. R-3535

CERTIFICATION

March 16, 1962

In the Matter of
REPRESENTATION OF EMPLOYEES
of the ALOHA AIRLINES, INC.

Clerical, Office, Stores, Fleet and Passenger Service Employees

The services of the National Mediation Board were invoked by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, the craft or class of Clerical, Office, Stores, Fleet and Passenger Service Employees, employees of Aloha Airlines, Inc.

At the time application was received, these employees were represented by the International Association of Machinists, AFL-CIO, Airline Division.

The Board assigned Mediator Clarence G. Eddy to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the employees concerned and by direction of the Board, the mediator was instructed to conduct an election by secret ballot, using an agreed to eligible list to determine the employees' representation choice.

The following is the result of the election as reported by the mediator and attested on March 8, 1962, by representa-

tives of the contesting organizations who acted as observers.

Number of employees voting:

Clerical, Office, Stores, Fleet and Passenger Service Employees

International Brotherhood of Teamsters, Chauffeurs Warehousemen and Helpers of America	International Association of Machinists, AFL-CIO, Airline Division	Void Ballots	Number of Employees Eligible
93	97	1	212

The National Mediation Board further finds that the carrier and employees in this case are, respectively, a carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties were given due notice of investigation.

CERTIFICATION

Therefore, the National Mediation Board certifies that the International Association of Machinists, AFL-CIO, Airline Division, has been duly designated and authorized to continue to represent for the purposes of the Railway Labor Act, the craft or class of Clerical Office, Stores, Fleet and Passenger Service Employees, employees of Aloha Airlines, Inc., its successors and assigns.

By order of the NATIONAL MEDIATION BOARD.

E. C. Thompson
Executive Secretary

Exhibit 28

NATIONAL MEDIATION BOARD
Washington

Case No. R-2953

DISMISSAL

February 13, 1956

In the matter of
REPRESENTATION OF EMPLOYEES
of the
SOUTHERN AIRWAYS, INC.

Clerical, Office, Fleet and Passenger Service Employees

The services of the National Mediation Board were invoked by the Air Line Agents Association, International, to investigate and determine who may represent for purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, Clerical, Office, Fleet and Passenger Service Employees, employees of the Southern Airways, Inc.

At the time application was received, these employees were not represented by any organization or individual.

The Board assigned mediator A. Alfred Della Corte to investigate.

FINDINGS

The investigation disclosed that a dispute existed among the employees concerned and by direction of the Board, the mediator conducted an election by U. S. mail ballot, using an agreed to eligible list to determine the employee's representation choice.

The following is the result of the election as reported by Thomas A. Tracy, who was assigned to count the ballots in this case and attested on July 22, 1955, by representative of the applicant organization.

Number of employees voting:

Clerical, Office, Fleet and Passenger Service Employees

Air Line Agents Association, Int'l.	Any Other Org. or Individual	Void Ballots	Number of Employees Eligible
42	0	0	207

The National Mediation Board further finds that the carrier and employees in this case are respectively, a carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein and that the interested parties were given due notice of investigation, whereupon the National Mediation Board finds that:

On the basis of the investigation and report of election, which shows that less than a majority of eligible employees participated in the election, the National Mediation Board finds no basis for Certification and the application is therefore dismissed.

By order of the NATIONAL MEDIATION BOARD.

E. C. Thompson
Executive Secretary

IN THE
UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

Civil Action No. 973-63

ASSOCIATION FOR THE BENEFIT OF NON-CONTRACT EMPLOYEES,

Plaintiff,

v.

NATIONAL MEDIATION BOARD; LEVERETT EDWARDS, Individually and as Chairman of the National Mediation Board; FRANCIS A. O'NEILL, JR., Individually and as Member of the National Mediation Board; and HOWARD G. GAMSER, Individually and as Member of the National Mediation Board,

Defendants.

Order Extending Temporary Restraining Order

This cause came on to be heard this day on plaintiff's motion for a preliminary injunction, and the court has decided to take the matter under advisement and to defer its ruling thereon. It appears to the court from the verified complaint and the affidavits, memoranda and argument presented in support of the motion and in opposition thereto, that defendants will conduct a representation election under section 2 of the Railway Labor Act, 44 Stat. 577, as amended, 45 U.S.C. § 152, affecting some 6400 employees represented by plaintiff, unless restrained by order of this court. It further appears that immediate and irreparable injury, loss and damage will result to plaintiff unless defendants are so restrained pending the determination of plaintiff's motion for preliminary injunction.

IT IS ORDERED, therefore, that the temporary restraining order issued in this cause on the 18th day of April 1963, be and is hereby extended to 10:00 A.M. on the 25th day of April 1963, and thereafter until the Court files its order.

Dated: April 24, 1963 2:40 P.M.

(SIGNED) LUTHER W. YOUNGDAHL
United States District Judge

Exhibit Unnumbered — Filed May 3, 1963

NATIONAL MEDIATION BOARD

(An Agency of the U. S. Government)

NOTICE OF ELECTION

To Be Held Under the
RAILWAY LABOR ACT
Involving
Clerical, Office, Stores, Fleet,
and Passenger Service Employees
of
United Air Lines, Inc.
Chicago, Illinois, April 22, 1963

TO ALL CONCERNED:

A SECRET BALLOT will be conducted by United States Mail on the question of representation of CLERICAL, OFFICE, STORES, FLEET, AND PASSENGER SERVICE EMPLOYEES of United Air Lines, Inc. as submitted to the National Mediation Board by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees in Case No. R-3590.

Section 2, Fourth, of the Railway Labor Act, as amended, provides that "the majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purpose of this Act."

Attention is called to Section 2, Railway Labor Act, providing that elections shall be free from interference, influence or coercion, etc.; also that it is unlawful for any carrier to interfere in any way with the organization of the employes, etc. Attention is also called to Order No. 2, issued by the National Mediation Board on May 29, 1936, and sent to the President of the Carrier in which it was ordered that "Notice in re Railway Labor Act" should be posted and maintained continuously in readable condition on all the usual and customary bulletin boards. The election will

be conducted in such a manner that interference, influence or coercion on the part of officers, foremen, or others in a supervisory capacity, will be avoided.

Reports of violation should be made to the Mediator or the National Mediation Board, Washington, D. C.

THE RULES TO GOVERN THE ELECTION ARE AS FOLLOWS:

1. The balloting will be conducted entirely by United States mail.
2. The Mediator will mail ballots including voting instructions to eligible voters. (Instructions for voting by U. S. Mail will be found on the reverse side of the ballot.) Should any voter fail to receive the ballot within a reasonable time, he should report the fact to the Mediator or the National Mediation Board, Washington, D. C.
3. Craft or Class: Employees eligible to vote shall be those designated as CLERICAL, OFFICE, STORES, FLEET, and PASSENGER SERVICE EMPLOYEES, appearing on the company payroll as of January 15, 1963, who retain an employe relation with the carrier on the date vote is taken. This includes those on furlough provided they are not employed by another carrier or in another craft or class on this carrier, those on authorized leave of absence, sick leave or injury. Dismissed employees, whose cases are being handled by the organization, on other than a leniency basis, will be considered eligible.
4. List of Eligible Voters: A list of the eligible voters has been prepared by Mediator W. H. Pierce and reviewed by party representatives. Only those employees whose names appear on such list will be permitted to vote, except that upon proof of error in the list, such error will be corrected.
5. Supervision of Election: The election will be supervised by a Mediator of the National Mediation Board, and he will interpret and apply the rules governing the election,

and decide on all challenged votes. His decision shall be final as to the immediate conduct of the election, but appeals may be made to the National Mediation Board, provided that notice of such appeal is given in writing to the Mediator prior to the submission of his report of the election to the Board. Each organization that is a party to this dispute, if it so desires, may appoint an observer to act as watcher. Such observers, or their properly authorized substitutes, will serve without liability or expense to the United States Government, and will be subject to the supervision and direction of the Mediator at all times.

6. The Official Ballot: The ballot to be used in the election has been reproduced by the direction of the National Mediation Board exactly the same type and with the same contents as facsimile ballot shown hereon.

7. Report on Election Results: The Mediator will count and tabulate all ballots in the presence of party observers, if any, at a time and place designated by the Mediator, at Chicago, Ill., beginning on May 27, 1963. A report giving the results of the election will be made by the Board's representative on a form prescribed by the Board and copy of this report will be furnished to the parties to the dispute.

8. Certification of Representatives: Proper certification of the name or names or the organization or individual that has been designated and authorized to represent the employees involved in this dispute will be made by the National Mediation Board to the parties in this dispute, and the same will also be certified to the carrier.

9. Final Disposition of Ballots: The original ballots and tabulation sheets, together with the report of the election by the Mediator, will be filled with the National Mediation Board at Washington, D. C., for reference and safekeeping.

By order of the NATIONAL MEDIATION BOARD

By: W. H. Pierce, *Mediator*

OFFICIAL BALLOT
NATIONAL MEDIATION BOARD
(AN AGENCY OF THE U. S. GOVERNMENT)
CASE No. R-3690
CLERICAL, OFFICE, STORES, FLEET, AND PASSENGER SERVICE EMPLOYEES
UNITED AIR LINES, INC.
April 22, 1963 to May 22, 1963

(Purpose of Election and Instructions for Voting by U. S. mail explained on Reverse Side.)

If you desire to be represented by AIR TRANSPORT DIVISION, BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES, AFL-CIO
Mark an "X" in this square

If you desire to be represented by AIRLINE DIVISION, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO
Mark an "X" in this square

If you desire to be represented by ANY OTHER ORGANIZATION OR INDIVIDUAL
Write name of such organization or individual in space below and mark an "X" in this square

This is a SECRET BALLOT
Do not sign your name

Marks in more than one square will make ballot illegal

Return this ballot in its entirety. Do not cut, mutilate or otherwise spoil it. If you do so, return ballot at once to the Mediator and obtain a new one.

(Reverse Side of Ballot)

PURPOSE OF ELECTION

A dispute exists among the craft or class of employees named on the reverse side of this ballot as to who are the representatives of such employees designated and authorized in accordance with the requirements of the Railway Labor Act, and the National Mediation Board (an agency of the U. S. Government) is taking a SECRET BALLOT

in order to ascertain and to certify the names or name of organizations or individuals designated and authorized to act as representatives for the purpose of the Act.

INSTRUCTIONS FOR VOTING BY MAIL

An official ballot, a SECRET "A" envelope, and a return addressed mailing envelope (no postage required) are enclosed herewith. To vote by mail, carry out the following instructions:

Mark an "X" in the square of your choice, fold and place the ballot in the SECRET envelope marked "A", seal the envelope without placing any mark of identification thereon. After sealing the envelope marked "A", place it in the mailing envelope marked "BALLOT" and seal; then PLACE YOUR NAME AND ADDRESS IN THE UPPER LEFT-HAND CORNER OF THE MAILING ENVELOPE MARKED "BALLOT". Deposit this envelope, which requires no postage, in the U. S. Mail so as to reach the Post Office in Chicago, Illinois, not later than 5:00 P.M., May 22, 1963.

After the mailing envelope has been checked against the eligibility list, that envelope will be destroyed and the SECRET "A" envelope will then be mixed with other SECRET "A" envelopes before being opened by Mediator, thus insuring complete secrecy.

YOUR BALLOT CANNOT BE COUNTED UNLESS YOU PLACE YOUR NAME AND ADDRESS ON THE MAILING ENVELOPE.

Civil Action No. 973-63

On April 18, 1963, Judge Hart of this court issued a temporary restraining order barring the National Mediation Board from proceeding with an election among certain categories of employees of United Air Lines for the election of a collective bargaining representative, pursuant to the Railway Labor Act, 45 U.S.C. §151 *et seq*, as made appli-

cable to employees of air carriers, 45 U.S.C. §§181-8. Ballots had been scheduled to be send out by mail to the employees on April 22, 1963. The temporary restraining order barred the mailing of these ballots pending the hearing, in this Court, on a motion for a preliminary injunction. This hearing was held on April 24, and this Court continued the temporary restraining order in effect so that the Court could consider fully the written memoranda and oral arguments of counsel and the complex legal issues raised in those arguments before finally issuing its order.

The Court now issues its order, on the basis of the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. This is an action brought by a group of employees of United Air Lines, Inc. (hereinafter called "United"), organized and incorporated under the name "Association for the Benefit of Non-contract Employees," the plaintiff herein. Plaintiff does not seek recognition as a bargaining agent, nor does it want its name on the ballot.

2. On August 24, 1962, the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees (hereinafter called the "Brotherhood"), filed an application with the National Mediation Board pursuant to 45 U.S.C. §152. Ninth, of the Railway Labor Act, for an investigation of a representation dispute among employees of United. The case was docketed as Case No. R-3590 by the Board. On November 19, 1962, the Mediator assigned by the Board began an investigation of this dispute and checked the authorization cards from thirty-five percent or more of the employees in the craft or class furnished by the Brotherhood in support of its application. As a result of the Mediator's investigation, it was determined that a representation dispute existed among these employees, between two unions, the Brotherhood and the International Association of Machinists (hereinafter called "Machin-

ists''). On December 19, 1962, in accordance with its rules, an election was authorized by the Board, and the Mediator asked United to furnish the names and addresses of eligible employees so the election could be held. Both the Brotherhood and the International sought to be certified as the collective bargaining representative, and both their names appear on the ballot which the Board has prepared.

3. The ''craft or class'' in which this representation dispute exists is defined by the Board as ''Clerical, Office, Stores, Fleet and Passenger Service employees'' of United. This ''craft or class'' was established by the Board in 1947. There are approximately 12,300 employees certified to vote in this election as members of this craft or class. The plaintiff purports to represent 6,400 of these employees. Cards signed by the employees authorizing the plaintiff to represent the employee before the Board are in the possession of the Board. The Board has made no attempt to verify the number of authorization cards, nor to check the signatures on the cards against the eligible list of voters.

4. The official ballot provides a square in which the voter can mark an ''X'' if he wishes to be represented by the Brotherhood, another square to be marked if he wishes to be represented by the International, and a blank line where the voter can write the name of an organization or an individual ''[i]f you desire to be represented by ANY OTHER ORGANIZATION OR INDIVIDUAL.'' There is no place on the ballot where a voter could state that he prefers no collective bargaining representation. If a voter should write ''no representation'' or ''no union'' on the ballot, the ballot would be counted by the Board as void. The ballots are secret, and returnable by mail.

5. On February 14, 1963, the Board received from the plaintiff a petition asking leave to intervene in the representation dispute and asking that the class or craft grouping be changed either with or without a hearing, and that the form of the ballot be changed to permit the voters to

express a preference for no collective bargaining representation. On February 25, 1963, the plaintiff forwarded to the Board a statement which included the following points:

1. We are not seeking recognition as a bargaining agent; we do not want our name on the ballot.
2. We have no intention of becoming a Company union.
3. We are not sanctioned, recognized, or assisted in any way by United Airlines management.
4. Our Association will be dissolved after such time as it has served its purpose.

The Board determined that the plaintiff was not a properly constituted party at interest in the pending dispute, and on March 27, 1963, informed the plaintiff that its petition was dismissed. On April 5, 1963, the plaintiff requested the Board to reconsider its denial of the petition to intervene. On April 12, 1963, the Board denied plaintiff's request for reconsideration. The present suit was filed on April 13, seeking to enjoin the Board from mailing out the ballots on the scheduled date of April 22, 1963.

CONCLUSIONS OF LAW

Based on the findings of fact heretofore set forth, and for the reasons fully set forth in a memorandum attached hereto, which memorandum is specifically made a part of these findings of fact and conclusions of law, the Court has reached the following conclusions:

1. The Court has jurisdiction over the subject matter of this action.

2. The plaintiff would be irreparably injured by the holding of said election without having an opportunity to express on the ballot a preference for no collective bargaining representation.

3. The balance of convenience is in favor of the plaintiff.

4. The public interest requires a determination of the legality of the above election before the ballots are sent out.

5. The Railway Labor Act, 45 U.S.C. §151 *et seq*, requires that there shall be on the above ballots a place where eligible voters may express a preference for no collective bargaining representation.

WHEREFORE, it is by the Court this 3d day of May, 1963,

ORDERED That the plaintiff's motion for a preliminary injunction enjoining the defendant from conducting any election among the "Clerical, Office, Stores, Fleet and Passenger Service employees" of United Air Lines, Inc., [in which the form of the ballot does not permit a voting employee to cast a vote against collective bargaining representation shall be and the same is hereby granted;] and it is

FURTHER ORDERED That the defendant shall have one week from today's date to show cause why the preliminary injunction above granted shall not be made permanent, and it is

FURTHER ORDERED That the plaintiff's request that the Board shall conduct a hearing relating to the question of the appropriateness of class or craft of employees among whom the election was to be held, at which hearing the plaintiff could be heard as a party in interest, shall be and the same is hereby remanded to the Board for further consideration in the light of the Court's conclusion that the Railway Labor Act, 45 U.S.C. §151 *et seq* gives employees a right to have a ballot on which they may express a preference for no collective bargaining representation.

Luther W. Youngdahl
Judge

MEMORANDUM

This memorandum shall specifically be considered a part of the findings of fact and conclusions of law, *supra*.

I

Preliminary Injunction

1. *Jurisdiction.*

This action raises serious questions involving the proper interpretation of certain provisions of the Railway Labor Act, 45 U.S.C. §151 *et seq.* For the reasons fully set forth in Part II, *infra*, this Court has jurisdiction to issue a permanent injunction. Wherever equity has jurisdiction to grant an injunction by final decree, it has jurisdiction to grant a preliminary injunction. *American Code Co.* v. *Bensinger*, 282 F. 829, 835 (2d Cir. 1922).[1]

2. *Appropriateness of Preliminary Injunction.*

"The award of a preliminary injunction is an extraordinary remedy which will not be granted unless upon a clear showing of probable success and possible irreparable injury to plaintiffs * * *." *Societe Comptoir de L'Industrie Cotonniere Etablissements Boussac* v. *Alexander's Dept. Stores, Inc.*, 299 F. 2d 33, 35 (1962).

> The award of an interlocutory injunction by courts of equity has never been regarded as strictly a matter of right, even though irreparable injury may otherwise

[1] Nor is the present application for a preliminary injunction in any way barred by the fact that another judge of the District Court, as well as the Court of Appeals, have both denied a preliminary injunction in another case which involves the same disputed election, *United Airlines, Inc.* v. *National Mediation Bd.*, Civil No. 402-63, now on appeal, since it was agreed at oral argument before me that one of the important issues argued before both courts in that case was the question of whether the employer, United Airlines, had standing to enjoin an election among its employees—an issue obviously not in any way involved in the present application, and since it was further agreed that the orders in that case do not indicate the grounds for the two denials. Both courts in the other case may well have decided largely on the basis of this issue of the employer's standing.

result to the plaintiff. * * * Even in suits in which only private interests are involved the award is a matter of sound judicial discretion, in the exercise of which the court balances the conveniences of the parties and possible injuries to them according as they may be affected by the granting or withholding of the injunction. * * * But where an injunction is asked which will adversely affect a public interest for whose impairment, even temporarily, an injunction bond cannot compensate, the court may in the public interest withold relief until a final determination of the rights of the parties, though the postponement may be burdensome to the plaintiff. *Yakus* v. *United States*, 321 U.S. 414, 440 (1944).

The peaceable settlement of labor controversies, especially where they may seriously impair the ability of an interstate * * * carrier to perform its service to the public, is a matter of public concern. * * * Courts of equity may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved. Virginian Ry. Co. v. System Fed'n 40, Ry. Employees Dep't, 300 U.S. 515, 552 (1937).

Taking into account the above principles, this Court, to grant a preliminary injunction which would bar the National Mediation Board from proceeding with the disputed election, must conclude that the plaintiff may be irreparably injured by the holding of such election; that the balance of convenience favors the plaintiff in the sense that the inconvenience which would flow to it from holding the election is greater than the inconvenience which would flow to the National Mediation Board from postponing the election; that the public interest will be advanced, not injured, by postponing the election; and that the plaintiff has made a clear showing of probable success in the ultimate determination of the merits.

Since the Court in Part II, *infra*, has decided to reach and determine the ultimate merits of the controversy, and since the Court therein has concluded that the scheduled election, if held, would be illegal under the Railway Labor

Act, 45 U.S.C. §151 *et seq*, the Court need consider here only the issues of irreparable injury, balance of convenience, and protection of the public interest.

a. *Irreparable Injury.* It is almost certain that the plaintiff would be irreparably injured if the scheduled election were to be held. As an association which seeks to have no collective bargaining representation, this association represents employees of United Airlines who do not wish to be joined with other employees who wish collective bargaining representation. The only way that the plaintiff can achieve its aim of having no representation, under the current procedure of the National Mediation Board, is to have a majority of the eligible votes actually refrain from returning a ballot. In that event, the Board will refuse to certify any collective bargaining representative. The chance of such a result, however, is slim, because the Board has refused to state, in its instructions sent to each eligible voter, that such is the Board's policy. If, instead of refraining to vote, the voter returns a ballot marked "No representation" or "No union," the ballot will be counted for purposes of participation, but will be tabulated as void; the voter would thus cast a ballot against the very position he seeks to support. Furthermore, even if this Association were to undertake to instruct all of its members not to return any ballot, the Board has not made clear exactly what must be done. Should the voter wishing to vote to have no collective bargaining representation simply fail to return anything? Or should such voter return, empty, either one or both of the two envelopes distributed by the Board—the "mailing envelope" and the "secret envelope marked 'A'"? If one or both of the envelopes should be returned, should the voter place his name and address on the envelope, or should he leave that blank?[2] The procedure which this Association should instruct its members to follow is, therefore,

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[2] The "Instructions for Voting by Mail" state: "YOUR BALLOT CANNOT BE COUNTED UNLESS YOU PLACE YOUR NAME AND ADDRESS ON THE MAILING ENVELOPE." (Exhibit 23.)

highly ambiguous, and the Board has indicated that it will take no action to correct the ambiguity.

What irreparable injury would result to the plaintiff from trying to follow such an ambiguous procedure? For one thing, for this Association even to *engage* in a campaign to urge employees *not* to vote opens the Association to charges by other employees that the Association employees are in some way opposed to democratic electoral procedures. To be sure, such "Don't vote" campaigns are occasionally thought necessary even in the most democratic of electoral procedures; but there is no doubt that even when necessary, such campaigns may leave the reputations of those conducting the campaign besmirched.

In addition, if the Association should not succeed in persuading a majority of eligible voters to refrain from returning their ballots, and the Board were therefore to certify a collective bargaining representative on the basis of the vote, in conformity with its stated policy,[3] then there is serious question whether any court would have jurisdiction to examine the legality of the electoral procedure. The Supreme Court has held that in at least one situation, federal District Courts do not have "the power to review the action of the National Mediation Board in issuing the certificate." *Switchmen's Union* v. *National Mediation Bd.* 320 U.S. 297, 300 (1943). But see *Airline Dispatchers Ass'n* v. *National Mediation Bd.*, 89 U.S. App. D.C. 24, 27-8

[3] The Board has also argued that there is no irreparable injury because it is not clear that the Board will certify a collective bargaining representative on the basis of the election, and hence that an injunction would be "premature." At the hearing on the motion for a preliminary injunction, however, the Board made clear that the only basis on which it would not certify a representative on the basis of the electoral results was if a majority of eligible voters failed to participate: "Under the practices of the Board there will be no certification of a representative unless a majority of those eligible to vote affirmatively, vote." (Statement of Mr. Leathers at the hearing.) The same policy of the Board was stated in Mr. Thompson's affidavit: "The Board does not issue a certification after a representation election has been held unless a majority of those eligible to participate in the election have cast *valid* ballots." (Affidavit, p. 11.)

(1951). And see *infra*, Part II, for further discussion. Such doubts about the availability of another remedy to correct the results of illegal governmental action can constitute part of the basis for a finding of irreparable injury, *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U.S. 579, 585 (1952), especially when the actual damages, both present and future, are "of such nature as to be difficult, if not incapable, of measurement." *Ibid.* This Court therefore concludes that it is extremely likely that the plaintiff herein would be irreparably injured if the scheduled election were to proceed.

b. *Balance of Convenience.* The Board has made only the most general allegations of the inconvenience to it of having the election delayed:

> Delay will be unfair to the Board, which has already spent considerable time and effort assembling timely data necessary to proceed with an election. Much of this effort would be nullified by further delay in the election. (Board's Memorandum in opposition to plaintiffs' motion for preliminary injunction, p. 24.)

This statement is amplified in the affidavit of E. C. Thompson, Executive Secretary of the Board, as follows:

> The Board's records on Case R-3590 show this case has been under active handling by the Board since August 27, 1962 and a dispute was found to exist among the craft or class of employees involved on December 19, 1962. The Board's mediators have spent approximately three months in preparing a list of the eligible employees from the carrier's records due to the refusal of the carrier to furnish that information to the mediators. The eligible list has now been completed and agreed to by the contesting organizations, namely the BRC [the Brotherhood] and the IAM [the International]. The notice of election and ballots have been printed and the mediator is now in the process of preparing the ballots for mailing to the eligible employees. Any further delay at this time would nullify much of the effort expended by the Board to conduct an election. (Affidavit, p. 12.)

The very delays which the Board recounts, however, argue against any severe inconvenience from a further delay, since an election postponed this long can easily wait to have its legality determined. And the fact that the Board has already printed ballots is obviously a trifling argument in the face of the possible irreparable injuries to the plaintiff from the use of those very same ballots. The Court, therefore, concludes that the balance of convenience must be resolved in favor of the plaintiff.

c. *Public Interest.* The Board's allegations concerning the public interest in a speedy election are similarly general:

> It is in the public interest that the procedures of the [Railway Labor] Act, as applied by the Board in the light of its long and successful experience in railroad and airlines labor relations, should be promptly carried out. * * * The public interest would not be served by an injunction which delays settlement of this dispute. * * * Moreover, the granting of an injunction would injure those parties directly involved in the representation proceeding. The two unions involved are directly concerned. Delay of the election may seriously impair their organizing campaigns, which necessarily depend upon the timing of the election. Delay will also be unfair to the employees who have furnished authorization cards to the unions, indicating their desire to have the issue investigated by the Board and resolved through an election. (Board's Memorandum, *supra*, p. 22-4.)

There is no showing here of the need for any immediate negotiations between the employer and some collective bargaining representative, nor is there any showing of any threatened strikes or other threat to the continued services of the carrier. Indeed, this Court believes that more bitterness would probably be engendered by the holding of an election, the results of which might later be set aside as illegal, than by postponing the election pending a determination of its legality. In addition, the two unions which are

organizing their campaigns should surely be saved the expense of a second campaign which would be necessary if the results of the first election were set aside as illegal. Since the Board has failed to make a more precise showing that the public interest requires a speedy election, the Court is not intruding upon any preliminary findings which the Board's expertise might have entitled the Board to make; the Court therefore concludes that the interest of the public can best be served by a determination of the legality of the scheduled election now.

Because there is an extreme likelihood that plaintiff would be irreparably injured by the holding of the scheduled election, because the balance of convenience is in plaintiff's favor, and because the public interest requires that the legality of the election be determined before such election is held, the Court, pursuant to Rule 65, *Fed. R. Civ. P.*, will grant a preliminary injunction barring the scheduled election pending the final determination of the merits of this controversy.

II

The Merits

The Board has conceded that the plaintiff seeks, by the motion for preliminary injunction, the ultimate relief requested; indeed, the Board argues on this basis that the motion for a preliminary injunction should be denied, since a preliminary injunction should not be a means of obtaining such relief before a full consideration of the merits. (Memorandum in opposition to plaintiff's motion for preliminary injunction, pp. 18-20.) Normally, of course, such consideration of the merits would be heard later, and a preliminary injunction would issue solely on the basis of irreparable injury, the balance of convenience, and the public interest, as discussed in Part I, *supra*. In this case, however, the Court deems it appropriate to proceed immediately to the merits of the issues. The Court does so because the merits have been fully briefed and argued on the motion for pre-

liminary injunction,[4] and because there are no disputed facts.

1. *Jurisdiction.*

This is an action seeking a permanent injunction against the holding of an election to select a collective bargaining representative, upon the ground that the procedures of the National Mediation Board in preparing for the election and in soliciting the will of the majority do not conform to procedures required both by the Railway Labor Act, 45 U.S.C. §151 *et seq.*, and by the due process clause of the Fifth Amendment of the Constitution. This Court has jurisdiction under 28 U.S.C. §1337,[5] since the Railway Labor Act is an act of Congress regulating commerce, *Virginian Ry. Co.* v. *System Fed'n*, 300 U.S. 515, 553-7 (1937), and since 28 U.S.C. §1337 requires no monetary jurisdictional amount. *Felter* v. *Southern Pac. Co.*, 359 U.S. 326, 329 n. 4 (1959).

Such general jurisdiction, however, is not sufficient to dispose of the jurisdictional issue, since in cases involving the Railway Labor Act, jurisdiction to review actions of the unions, employers, or the National Mediation Board depends upon the particular issue upon which review is sought.

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[4] Some of the Board's argument-headings reveal the full extent to which the merits were briefed: "The Court is Without Jurisdiction Over the Subject Matter;" "Plaintiff's Contentions are Without Merit;" "Plaintiff Lacks Standing to Maintain This Action;" "Even if Plaintiff Were a Party to The Proceeding, It Would Not Be Entitled to a Hearing as to the Craft or Class;" "Plaintiff's Objections to the Form of Ballot are not Sound;" "The Board's Decision to use the Long Established Craft or Class and the Customary Form of Ballot is not Erroneous." It is true, of course, that all of these arguments were sub-arguments under a main heading to the effect that jurisdiction and the right to relief "are Not Clear" and that it "is Unlikely that Plaintiff Will Prevail Upon the Merits." Nevertheless, as the Board itself has conceded, it was forced to deal directly with those merits by virtue of the fact that the ultimate and the preliminary relief are inextricably tied together.

[5] "The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce * * *." 28 U.S.C. §1337.

On the one hand, courts do not have jurisdiction to review the propriety of the Board's definition of the scope of a "craft or class," *Switchmen's Union* v. *National Mediation Bd.*, 320 U.S. 297 (1943), for:

> It has become well settled that in making "craft or class" determinations, the [Board] may regroup, amalgamate, or splinter "historic" bargaining groups, taking into account technological and functional changes, and that the decision of the Board in setting up a "class" for representation in a jurisdictional dispute is unreviewable in the courts. *UNA Chapter, Flight Eng'rs' Ass'n* v. *National Mediation Bd.*, 111 U.S. App. D.C. 121, 124, 294 F. 2d 905 (1961). *Accord, Air Line Stewards Ass'n* v. *National Mediation Bd.*, 111 U.S. App. D.C. 126, 294 F. 2d 910 (1961), *cert. denied*, 369 U.S. 810 (1962).

Nor do courts have jurisdiction to decide which of two unions seeking to be the collective bargaining representative should have been certified by the Board as the representative of such "craft or class," *General Committee, Bhd. of Locomotive Eng'rs* v. *Missouri R.R.-K.-T. Co.*, 320 U.S. 323 (1943).

> Where there is doubt as to representation and where there are rival jurisdictional claims, those doubts are to be resolved and the claims are to be vindicated or rejected not by the courts but by the administrative and other processes provided by the Act. *Flight Eng'rs' Ass'n* v. *Eastern Air Lines, Inc.*, 311 F. 2d 745, 757 (2d Cir. 1963).

Nor do courts have jurisdiction to decide whether particular employees should or should not have been declared eligible voters in a representation election. *Decker* v. *Venezolana*, 103 U.S. App. D.C. 301, 258 F.2d 153 (1958); *WES Chapter, Flight Eng'rs' Ass'n* v. *National Mediation Bd.*, ____ U.S. App. D.C. ____, 314 F.2d 234 (1962).

On the other hand, courts have taken jurisdiction to review actions of the Board where serious issues of constitu-

tionality or of statutory construction were presented. Thus federal courts have taken jurisdiction to decide whether the Railway Labor Act was within the power of Congress to enact and whether such Act required an employer to negotiate with a collective bargaining representative once such representative had been certified by the Board. *Virginian Ry. Co.* v. *System Fed'n* 300 U.S. 515 (1937). And the Supreme Court held that there was jurisdiction to decide whether the Act required the union bargaining representative to represent all employees within the class, regardless of race, thereby reversing lower federal courts which had held there was no such jurisdiction. *Tunstall* v. *Brotherhood of Locomotive Firemen,* 323 U.S. 210 (1944). The Court in *Tunstall* specifically distinguished the *Switchmen's Union* case, 323 U.S. at 213, for the reasons set forth in the companion case of *Steele* v. *Louisville & N. RR. Co.,* 323 U.S. 192, 204-5 (1944). Furthermore, the Court of Appeals has discussed the facts of the Board's procedures before reaching the conclusions that the "investigation" required by the statute, 45 U.S.C. §152. Ninth, had been held, and that no constitutional question of due process was presented. *WES Chapter* v. *National Mediation Bd., supra,* 314 F.2d at 237; *UNA Chapter* v. *National Mediation Bd., supra.* And the Court of Appeals has specifically taken jurisdiction to determine the correctness of a construction of the statute by the Board which limited the statute's geographical scope. *Air Line Dispatchers Ass'n* v. *National Mediation Bd.,* 89 U.S. App. D.C. 24, 189 F.2d 685 (1951), *cert. denied* 342 U.S. 849 (1951).

The *Air Line Dispatchers* case, *supra,* is highly important in setting the proper context for a resolution of this difficult question of whether or not this Court has jurisdiction over the particular issue presented here. That case carefully discussed the sweeping language of the *Switchmen's Union* case, *supra,* 320 U.S. at 300-6, which had severely limited the scope of judicial review over the Board's action, and concluded that a fundamental change had been

brought about by the enactment, subsequent to *Switchmen's Union*, of the Administrative Procedure Act, 5 U.S.C.A. §§1001-11. The Court of Appeals noted that §10 provides:

> Except so far as (1) statutes preclude judicial review or (2) agency action is by law committed to agency discretion—
>
> (a) Right of Review. —Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof." (5 U.S.C.A. §1009.)

The court went on to say that, although the Administrative Procedure Act was not intended to change existing case law as to particular issues which had previously been held not within judicial cognizance, such broad statements as that in the *Switchmen's Union* case to the effect that in view of the history of the Railway Labor Act a purpose to afford judicial remedy must plainly appear "should now be read in the light of the purpose of the Administrative Procedure Act subsequently enacted." 89 U.S. App. D.C. at 28. The court went on to quote from a document indicating that purpose:

> Legislative intent to forbid judicial review must be, if not specific and in terms, at least clear, convincing, and unmistakable under this bill. The mere fact that Congress has not expressly provided for judicial review would be completely immaterial. *Ibid.*

The court concluded that if "the nature of the question" was such as to suggest judicial review, then the Administrative Procedure Act would authorize such review. *Ibid.*

In the light of the Administrative Procedure Act, this Court views "the nature of the question" presented here as urgently requiring judicial review. The question involves a serious issue of statutory construction, possibly rising to constitutional dimensions.

The basic question is whether the Railway Labor Act denies to voters certified as eligible to vote in an election held pursuant to 45 U.S.C. §152. Ninth, for the selection of a collective bargaining representative, the chance to vote for no representation at all. Although the Board's policy is to refuse to certify any representative if a majority of eligible voters fail to *participate* in the election, the Board construes the statute as forbidding a direct vote for no representation. The Board's position as to the required interpretation of the statute is shown in the italicized portions of the following interchange between the Court and the attorney for the Board at the hearing on the present motion:

The Court: "Are you willing, on behalf of the Mediation Board, to have marked on the ballot a statement that the failure to vote will have the same effect as if they had voted 'No' and wished not to be represented by a union?"

Mr. Leathers: "I don't think I am authorized to make that representation."

The Court: "If you say that it is the same, why aren't you willing to agree to it?"

Mr. Leathers: "I am about to explain this, I think, in this way: *The Mediation Board has taken the position that the language of the statute requires a representative* and that a majority of those—the Supreme Court has held a majority of those voting are authorized to elect that representative. Now the Mediation Board feels that the form of ballot which they have been using over this long period of time, this form of ballot is not something new, it is not something untried."

The Court: "Whether it is something new or old doesn't help us much. The question is whether these people are being deprived of a right which they ought to have, to express their wishes as to whether they should be represented."

Mr. Leathers: "I think the short answer to that is that the Supreme Court has held that the majority of those actually voting are entitled to choose the representative."

The Court: "They claim they have no right to vote at all."

Mr. Leathers: "No, they have a right to vote. *They just don't have a right to vote for no representation.*"

The Court: "Isn't that in effect giving them no right to vote?"

Mr. Leathers: "No, because they can vote for one of the representatives if they wish to."

The Court: "Suppose they don't want to vote for either? They are denied the right to vote on that issue?"

Mr. Leathers: "Yes, that's right. Understand, they are not denied the right to express their views by refraining from voting."

After quoting from the language of the Supreme Court in *Virginian Ry. Co.* v. *System Fed'n, supra,* 300 U.S. at 559, Mr. Leathers went on to state:

Mr. Leathers: "The Supreme Court in that case seems to suggest that the rule here is the same rule as that in any election. In other words, *if you have a chance to elect two Congressmen, there is no chance on the ballot to say I don't want a Congressman at all.* The statute here, [45 U.S.C. §152. Second] provides for the solution of these disputes by representatives. The Board's function under [45 U.S.C. §152. Second] is to decide between the two disputants who claim they are representatives. There is nothing in the statute which provides——"

The Court: "Is there anything in the statute that indicates that a group who do not want to be represented should not also have the right to express themselves?"

Mr. Leathers: "I think the Supreme Court has so indicated in the *Virginian* case."

This Court believes that the legal issue thus squarely posed—whether in a vote for a collective bargaining representative of a "craft or class" designated by the Board, the Railway Labor Act requires that eligible voters shall have no right to cast a ballot against any representation at all—is of great importance and should be resolved by the courts. Indeed, the Board's own reliance on the *Virginian* case for the merits of its position shows clearly that the Supreme Court has already assumed jurisdiction over an issue which is closely related to—but not identical with—the one presented here.

I therefore conclude that this Court has jurisdiction to review those actions of the Board which reflect the Board's conclusion that the Railway Labor Act forbids a vote for no collective bargaining representation.

2. *Standing.*

The Board has raised no issue as to whether the plaintiff's members actually are, as alleged in the complaint, "personal service and clerical employees of United Air Lines." The Board's executive secretary has merely stated, by affidavit, that the cards authorizing the plaintiff to speak for its members were, as of April 22, 1963, being held in the Board's offices, and that:

> The [plaintiff] has stated they have presented a total of approximately 6,400 cards. No attempt has been made by the Board to verify this number or to check the signatures on the cards against the eligible list which has been prepared by the mediator for the reasons which are fully explained in Board's letter of March 27, 1963 * * *. (Thompson affidavit, p. 9.)

These reasons came down to one point:

> the [plaintiff] does not hold itself out as a representative for the purposes of collective bargaining under

> the Railway Labor Act, and accordingly, the [plaintiff] cannot be considered by the National Mediation Board as a bona fide intervenor * * *. (Exhibit B, letter of E. C. Thompson, March 27, 1963, p. 3.)

Since this decision of the Board depends completely upon the Board's construction of the statute as barring from formal participation any party not seeking to be an actual collective bargaining representative—as the plaintiff herein does not—the Board's argument on standing is merely another way of stating its position on the merits. Since the Board has made no argument that the plaintiff is not what the plaintiff is alleged to be—an association of employees in the "craft or class" in which the election is to be held—the Board must be deemed to have waived any need on the part of plaintiff to prove its own status in fact, since obviously such factual status, if challenged, would be just as relevant to a motion for preliminary injunction as it would be to the ultimate determination of the merits. The Court therefore concludes that the plaintiff has standing to maintain the action in court as an association composed of employees of United Air Lines who are in the "craft or class" in which the disputed election is scheduled.[6]

3. *The Ballot.*

The Board has construed the Railway Labor Act as forbidding a vote for no collective bargaining representation. This Court believes that this construction by the Board is contrary to one of the stated purposes of Congress in amending the Railway Labor Act in 1934, is not in harmony with the only language of the Supreme Court on the subject, overlooks the importance of freedom of expression on this issue, and is not required by the language of the statute.

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[6] The Court, of course, is here indicating no opinion as to whether the plaintiff should have been given "standing" by the Board as a formal "intervenor" in the Board's own proceedings.

45 U.S.C. §152 provides, in pertinent part, as follows:

> Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.
>
> Third. Representatives, for the purposes of this chapter, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. * * *
>
> Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this chapter. No carrier, its officers, or agents shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice * * *.
>
> Fifth. No carrier, its officers, or agents shall require any person seeking employment to sign any contract or agreement promising to join or not to join a labor organization * * *.
>
> * * * *
>
> Ninth. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this chapter, it shall be the duty of the Mediation Board, upon re-

quest of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this chapter. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. * * *

* * * *

Eleventh. Notwithstanding any other provisions of this chapter, * * * any carrier or carriers as defined in this chapter and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this chapter shall be permitted—

(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever

> is the later, all employees shall become members of the labor organization representing their craft or class * * *.

Several observations must be made about these statutory provisions. The first is that employees have "*the right* to organize and bargain collectively through representatives of their own choosing." Fourth, *supra.* (Emphasis added.) There is no *requirement* that they bargain collectively. Such freedom to bargain collectively or not is reinforced by the provision that no carrier "shall require any person seeking employment to sign any contract or agreement promising *to join or not to join* a labor organization * * *." Fifth, *supra.* (Emphasis added.) Only where a carrier and the employers have mutually agreed upon a union shop must an employee agree to join a labor organization. Eleventh, *supra.* Thus *freedom* of association or non-association is emphasized in the statutory language.

Of course, the statutory scheme does assume that, in most cases, employees *will* bargain collectively. The whole scheme assumes that there are "disputes" between the carrier or carriers on one side, and the employees on the other. Second, *supra.* The statute then establishes machinery for the determination of who among the employees will be the bargaining representative, Ninth, *supra,* and requires that the carrier keep out of such machinery. Third, Fourth, Fifth, *supra.* But if true employer-employee "disputes" do not happen to arise in such an across-the-board fashion, as seems to be the case when there are a variety of different individual agreements between employer and employee negotiated, by the wishes of both parties, on a one-to-one basis, then the assumption behind the statute disappears, and the whole point behind having the collective bargaining representative disappears. The issue in this case is whether employees have a right to vote, in effect, that such employer-employee "disputes" do not happen to exist in their particular category of employment, and whether if the Board

decides to hold the "secret ballot" provided in Ninth, *supra*, such employees have a right to indicate their preference on the ballot?

It is not surprising that the statute as such does not answer this question. Congress, in 1934, was concentrating upon erecting machinery which would *force* reluctant employers to deal with the chosen representatives of their employees. *Virginian Ry. Co.* v. *System Fed'n*, 300 U.S. 515, 538-49 (1937). There are strong indications, however, that Congress intended employees to be free *not* to associate as well as to associate. Thus the House Committee on Interstate and Foreign Commerce, in reporting the bill containing the 1934 amendments which put teeth in the Act, declared:

> 2. It provides that employees shall be free to join any labor union of their choice and likewise be free to refrain from joining any union if that be their desire and forbids interference by the carriers' officers with the exercise of said rights. H.R. Rep. No. 1944 to accompany H.R. 9861, 73d Cong., 2d Sess., 2 (1934).

During the hearings on this and related bills, Commissioner Joseph P. Eastman, Federal Co-Ordinator of Transportation and "draftsman of the 1934 amendments," *Switchmen's Union, supra*, 320 U.S. at 302, testified as follows:

> MR. HUDDLESTON: "Well, as I get your idea it is the purpose of this bill not to coerce organizations and not necessarily to imply an organization."
>
> COMMISSIONER EASTMAN: "No; it does not require collective bargaining on the part of the employees. If the employees do not wish to organize, prefer to deal individually with the management with regard to these matters, why, that course is left open to them, or it should be." *Hearings on H.R. 7650 and H.R. 9689 before the House Committee on Inter-*

state and Foreign Commerce, 73d Cong., 2d Sess., 57 (1934).

And on a similar Senate bill, Senator Wagner, the great champion of the rights of Labor, declared:

> SENATOR WAGNER: "* * * I didn't understand these provisions compelled an employee to join any particular union. I thought the purpose of it was just the opposite, to see that the men have absolute liberty to join or not to join any union or to remain unorganized." *Hearings on S. 3266. Before the Senate Committee on Interstate Commerce*, 73d Cong., 2d Sess., 76 (1934).

Such statements, while not conclusive, strongly support the Court's conviction that employees, under the statute, have a right to vote for no representation.

One thing that is clear in the statute, however, is that the Act gives to the "majority" of any craft or class of employees "the right to determine who shall be the representative * * *." Fourth, *supra*. Do the present practices of the Board protect the rights of this "majority"? The Board claims they do because if a majority fails to return any ballot, then no representative is certified. But what if slightly *less* than a majority "boycott" the election by failing to return their ballots? Out of 12,000 eligible voters, let us say, suppose that 5,000 "boycott" the election, 4,000 vote for one union, and 3,000 vote for another union. Since a majority of the eligible voters participated, a representative will be certified. That representative would be the union receiving 4,000 votes. Clearly, this is not majority rule; it is not even plurality rule. But it is the Board's interpretation of what the statute requires. In the *Virginian* case the Supreme Court accepted the Board's interpretation that if a majority of the eligible voters actually participated, then a majority of those participating could determine who should be certified. But the rationale the Supreme

Court used to reach this result is directly contrary to the Board's notion that those voters "boycotting" the election are indicating their preference for no representation. The Supreme Court justified a certification on the basis of majority participation because "[t]hose who do not participate 'are presumed to assent to the expressed will of the majority of those voting.'" 300 U.S. at 560. (Citations omitted.) That the Supreme Court clearly intended to adopt a construction of the statute which would encourage participation in these elections is shown by its subsequent statement that "[t]here is the added danger that the absence of eligible voters may be due less to their indifference than to coercion by the employer." *Ibid.* The Board's interpretation of the statute thus encourages the very nonparticipation which the Supreme Court sought to discourage.

It must be added that in the *Virginian* case, *supra*, the Supreme Court did not deal with the issue before the Court in the present case. No issue was raised as to the form of ballot, and neither party was arguing that employees should be permitted to vote for no representation. Indeed, as far as this Court knows, the electoral dispute which is the subject of this case is the first to raise this issue in the courts.[7]

The Board argues that since under 45 U.S.C. § 152, Ninth, *supra*, the Board may certify a collective bargaining representative without holding an election at all, then "[*a*] *fortiori*, if the statute does not require an election, it does not require a ballot in any particular form if the Board determines to go ahead with an election." (Board's Memo-

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[7] *Radio Officers' Union* v. *National Mediation Bd.*, 86 U.S. App. D.C. 319, 181 F.2d 801 (1950) upheld the Board in its refusal to certify a representative on the basis of minority participation. This, indeed, had been the result in the *Virginian* case in the District Court as to the one craft or class in which a majority had refrained from voting. *System Fed'n* v. *Virginian Ry. Co.*, 11 F. Supp. 621, 628 (D. Va. 1935). This part of the lower court's holding was not appealed, and was therefore not before the Supreme Court. 300 U.S. at 559.

randum, p. 13.) Obviously, however, such an argument proves too much, since there are some forms of ballot—one, for instance, which left off one of the unions certified to be a party to the dispute—which would be clearly illegal. This Court is merely indicating that *if* the Board decides to conduct its "investigation" by means of a "secret ballot," 45 U.S.C. § 152, Ninth, then that ballot must conform to the requirements of the statute.

In order to protect the vitality of these important electoral processes, this Court has concluded that the Railway Labor Act requires that employees be given the chance to vote directly for no collective bargaining representation. The National Labor Relations Board, under a statute whose language also left the issue open, adopted such a policy early in its history. In refusing to strike from the ballot the words "or by neither" in a campaign between two unions, the NLRB explained its position in terms which apply, as well, to the issue now before the Court:

> The Act, however, does not require an unwilling majority of employees to bargain through representatives. It merely guarantees and protects that right of a majority if it chooses to exercise it. Yet, if the opportunity of voting against the organizations named on the ballot were denied, a majority might be forced against its will to accept representation by one or other of the nominees. The policy adopted by the Board is designed merely to make sure that the votes recorded for a particular representative express a free choice rather than a choice in default of the possibility of expressing disapproval of both or all proposed representatives. * * *
>
> It was contended * * * that the privilege of an employee to indicate that he does not desire either of the named unions to represent him, if it must be preserved, could also be expressed by refraining

> from voting or by casting a blank ballot. In line with other authorities * * * however, we indicated * * * that those not voting would be presumed to acquiesce in the choice of the majority who do vote, and thus the employee who does not desire to be represented by either designated union would not express this preference by refraining from voting. As to the solution of casting a blank ballot, the practice of the Board, again in line with other authorities, has been to hold that a blank ballot is to be regarded as a failure to vote by one qualified to do so. We see no advantage in forcing employees who disapprove of the nominees to adopt the rather ambiguous method of expression involved in casting a blank ballot, when their choice can be clearly indicated by providing a space therefor.
>
> For the reasons which we have outlined, it is the conclusion of the Board that a free expression of the desires of the majority of the employees in the unit found appropriate in the present case demands that the ballot provide for a space in which employees may indicate that they do not desire to be represented by either of the named organizations. *Interlake Iron Corp.*, 4 NLRB 55, 61-[illegible] (1937). (Footnotes omitted)[8]

There is a special reason why this Court has concluded that employees under the Railway Labor Act have a statutory right to vote for no representation. Since the scope of the "craft or class" has been committed to the unreviewable discretion of the Board, *UNA Chapter* v. *National Mediation Bd.*, 111 U.S. App. D.C. 121, 124 (1961), the chance for employees to vote for "no representation" is, in instances such as the present one, really the chance to vote against the particular "craft or class" designated by the Board.

[8] It should be noted that this policy of the NLRB was thus adopted long before Congress in express language gave employees under the National Labor Relations Act the right "to refrain from" organizing.

Such a chance to vote against bargaining collectively with employees performing different functions under different conditions is a necessary safeguard against arbitrary action by the Board. If the courts cannot review the Board's grouping of such crafts or classes, then it is particularly important that the processes for majority determination be kept sharp and unambiguous.

This Court therefore concludes that an injunction should issue barring the Board from proceeding with the scheduled election unless the ballots are changed to provide a space in which the voters can vote for no representation.

Because the Board's position on the other issues raised by plaintiff—requesting a "hearing" on the appropriateness of the class or craft designated, at which the plaintiff would have status as a party-in-interest—depends partly upon the Board's interpretation of the statute as not permitting a vote against representation, the Court will decline to express any opinion on those issues and will instead remand the matter to the Board for further consideration in light of the fact that the Board's interpretation of the statute has been found erroneous. The Court therefore does not reach any constitutional issues of due process.

In the unforeseen event that the Court has failed to give consideration to some argument of the Board which would be relevant to the granting or withholding of a permanent injunction but was not relevant to the granting or withholding of a preliminary injunction, the Court will issue an order, returnable within one week, for the Board to show cause why the preliminary injunction should not be made permanent.

/s/ LUTHER W. YOUNGDAHL
Judge

May 3, 1963

Motion for Leave to Intervene as a Party Defendant

Comes now the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, and moves for leave to intervene as a defendant in this action, in order to assert the defenses set forth in its proposed answer which accompanies this motion. As grounds for this motion the applicant states:

1. It is the labor organization which, as alleged in paragraph V of the complaint, requested the National Mediation Board to initiate the proceedings which are the subject of this action.

2. It asserts defenses to plaintiff's claim which have not been presented by the present defendants and its interest in the proceedings before the Board are not adequately represented by the present defendants and the determination of the form and manner of election in this action may be binding.

3. The applicant is so situated that it may be adversely affected by a determination of the issues in the main action.

4. The applicant has defenses to the plaintiff's claim presenting questions of law and fact which are common to the main action.

5. There is attached hereto an answer to the complaint setting forth the claims and defenses for which intervention is sought.

WHEREFORE, the applicant prays that this motion be granted.

Respectfully submitted,

* * * *

Memorandum in Opposition to Applicant's Motion for Leave to Intervene as a Party Defendant

Plaintiff Association for the Benefit of Non-Contract Employees respectfully submits this memorandum in opposition to applicant's motion for leave to intervene as a party defendant.

Plaintiff opposes applicant's motion on the ground (1) that it fails to state grounds entitling applicant to intervene either as a matter of right or permissively, and (2) that it is untimely.

Response to Order to Show Cause

By its Order dated May 3, 1963, the Court granted defendants one wek to show cause why the preliminary injunction granted by that Order should not be made permanent. In response to the Order to Show Cause, defendants draw the Court's attention to their Motion to Dismiss the Complaint, or in the Alternative, for Summary Judgment filed herewith and the affidavits and memoranda submitted in support thereof and on the basis thereof oppose the entry of a permanent injunction against defendants and move the Court:

1. That the Court reconsider and vacate the preliminary injuction previously granted herein; and

2. That should the Court deny the motion to vacate the preliminary injunction that it stay the preliminary injunction and allow the Mediation Board to conduct the proposed election.

Filed 5/10/63

Motion of Defendants to Dismiss the Complaint or, in the Alternative, for Summary Judgment

Defendants, by their undersigned attorneys, move the Court to enter an order dismissing the complaint or, in the alternative, to enter an order for summary judgment upon the grounds that there is no genuine issue of material fact and that defendants are entitled to judgment as a matter of law in that:

1. The Court is without jurisdiction over the subject matter; and

2. Plaintiff lacks standing to maintain this action; and

3. The complaint fails to state a justiciable controversy; and

4. Plaintiff is not entitled to injunctive relief since

(a) the action is premature;

(b) plaintiff does not demonstrate irreparable injury; and

(c) the action taken by the National Mediation Board is not erroneous,

and in support of their motion defendants rely on the affidavit of Eugene C. Thompson, Executive Secretary of the National Mediation Board, dated April 22, 1963 and the exhibits attached thereto, defendants' memorandum in opposition to plaintiff's motion for a preliminary injunction and the affidavit of Francis A. O'Neil, Jr., dated May 10, 1963 and the memorandum of points and authorities in support of the motion for summary judgment both attached hereto and made a part hereof.

CITY OF WASHINGTON
DISTRICT OF COLUMBIA } SS

AFFIDAVIT

Francis A. O'Neill, Jr., being duly sworn, says:

1. I am a duly appointed member of the National Mediation Board and have served in that capacity continuously since April 1, 1947. I am fully familiar with the proceedings heretofore had in this action and more particularly the findings of fact, conclusions of law, order and opinion filed and entered by the Court on May 3, 1963. In the opinion of the National Mediation Board the limitations therein set forth upon the discretion of the Board with respect to the form of ballot which may be used in carrying out the investigation under Section 2, Ninth will have a far-reaching and adverse effect on the orderly administration of the Railway Labor Act, particularly in the performance of the Board's duty and function to resolve disputes where a determination must be made as to the identity of the duly designated representative for collective bargaining purposes of a majority of employees in a craft or class.

2. Section 2, Ninth of the Railway Labor Act (45 U.S.C. 152, Ninth) provides in part:

> "If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this chapter, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier."

In the present case the Board determined to hold an election on December 19, 1962. Since that date its mediators have spent approximately three months in determining a list of approximately 13,000 eligible employees from the carrier's records. The eligible list was completed and agreed to by the contesting organizations, namely, the BRC and the IAM as of April 1, 1963. Since there is a constant change in the employees of United Air Lines comprising the craft or class involved, it will, in the opinion of the Board, be necessary to prepare a new list of eligible voters unless the ballots are mailed on or before June 1, 1963. It is estimated that the compilation of the new list will require approximately the same time and expense as that involved in compiling the original list. While, of course, in this case it was not possible for the Board to comply with the statutory directive to certify a representative within thirty days, in the opinion of the Board a further delay required by the need for compiling such a new list will necessarily hamper and frustrate the discharge of the Board's responsibilities under the Railway Labor Act.

3. The form of ballot prepared by the Board in this case is substantially the form of ballot which has been in use since 1934. This form of ballot was first authorized by the U. S. Railroad Labor Board in its Decision No. 218, dated July 26, 1921. The ballot was later revised by the U. S. Railroad Labor Board in its Decision No. 418, dated November 19, 1921, by omitting identifying information. Following creation of the National Mediation Board on June 21, 1934, the Board on August 4, 1934, formulated and approved rules for conducting representation elections. The ballot sanctioned by this action is attached to Mr. Thompson's affidavit marked Exhibit 27. This form of ballot has been used by the Board in over 3,400 representation elections among various crafts or classes of railroad and airline employees since 1934. The National Mediation Board has published a pamphlet entitled *Administration of the Railway Labor Act by The National Mediation Board,* 1934-1957. The duty of the Mediation Board is described in the preface as follows:

"The principal duty of the National Mediation Board is to assist in the creation and maintenance of a sound mutual understanding between carriers and their employees covered by the Railway Labor Act. The first purpose of the act as stated therein is 'to avoid any interruption to commerce or to the operation of any carrier engaged therein.' A mutual understanding of each other's problems is necessary before a successful solution can be reached in any dispute. It is, therefore, the duty of the National Mediation Board, through its members and staff of mediators, to bring about such an understanding and to promote and maintain peace and order in labor relations, as a means of avoiding interruptions to interstate commerce."

The background and reason for the traditional form of ballot is stated as follows:

"Occasionally, it is suggested that the ballot used by the National Mediation Board does not permit a clear expression by a majority of eligible voters of their representation preference. The Mediation Board adopted, among the first rules issued by it, its present form of ballot and it has been used consistently since that time.

"The pertinent part of the ballot provides a space to vote for the contending organizations and, in addition thereto, the following:

If you desire to be represented by any other organization or individual write the name of such organization or individual in the space below.

* * * *

And mark an "X" in this square ☐

"The form of ballot used is based on the general purpose of the Railway Labor Act as contained in

section 2, which provides, among other purposes, for the complete independence of carriers and of employees in the matter of self organization; and, 'to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules of working conditions.' In the furtherance of these general purposes, section 2, second, of the act makes it the duty of the carriers and their employees to consider and, if possible, decide, all disputes, 'in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.' Section 2, third, provides that 'representatives, for the purpose of this act, shall be designated by the respective parties without interference, influence, or coercion by either party after the designation of representatives by the other * * *.'

"The above-quoted excerpts from the act show clearly that it was the intent of Congress in framing the 1934 amendments to the original Railway Labor Act of 1926, that both the carriers and employees separetely designate representatives for the purposes of collective bargaining. To effectuate this mandate of the Congress, the National Mediation Board, in 1934, designed the form of ballot which has been used without material change to the present time. This ballot was drafted to permit the employees to secure some form of representation, as contemplated in the sections of the law quoted above. It leaves to the majority of the employees of any craft or class full freedom to determine who shall be their representative for the purposes of the act."

Since the investigation of a representation dispute by the Mediation Board is initiated by a request of one of the

parties to the dispute, the form of ballot to be used in case an election is held has, in the opinion of the Board, a direct bearing upon whether the parties to the dispute will resort to self-help or will seek the services of the Board in resolving a representation dispute. The decision issued by the Court on May 3, 1963 concludes that the Board should be barred from proceeding with the scheduled election unless the ballots are changed to provide a space in which the voters can vote for no representation. In the opinion of the National Mediation Board any requirement that the ballot used in a representation dispute be changed to provide a space in which the voters can vote for no representation will tend to encourage the parties to a representation dispute to resort to self-help rather than to seek the services of the Board in resolving the representation dispute and will result in strikes and unrest in the industries covered by the Railway Labor Act which would not result were the normal form of ballot used.

In the more than 3,400 elections which have been held by the Board using the traditional form of ballot there has been complete cooperation by individuals and organizations seeking a representation of employees in the various crafts or classes. The original Railway Labor Act passed in 1926 did not have a provision comparable to Section 2, Ninth. During that period, I am informed that it was exceedingly difficult to resolve any dispute involving wages, hours, and conditions of employment by reason of the fact that machinery was not provided to determine a representative of a craft or class. In some instances resort was had to self-help to force a resolution of disputes involving wages, hours, and conditions of employment, as well as representation.

/s/ Francis A. O'Neill, Jr.

Subscribed and sworn to before me
this 10th day of May, 1963

Mary Jane Scoville

My commission expires August 31, 1964

Statement of Material Facts as to Which Defendants Contend There is No Genuine Issue

In support of its motion filed herewith, defendants, in accordance with Rule 9(h) of this Court submit that there is no genuine issue as to the material facts contained in the affidavit of Eugene C. Thompson, dated April 22, 1963 and the exhibits attached thereto, and the affidavit of Francis A. O'Neill, Jr., dated May 10, 1963, and the material facts contained in the statement in defendants' memorandum in opposition to plaintiff's motion for a preliminary injunction.

Order

Counsel for the National Mediation Board having informed the Court that the policy of the Board concerning ballots marked "No representation" or "No union" is to tabulate such ballots as void, and to treat such ballot as if the voter had refrained from returning a ballot at all, it appears to the Court that the following sentences, appearing on page 10 of the Court's memorandum filed May 3, 1963, should be deleted therefrom:

> If, instead of refraining to vote, the voter returns a ballot marked "No representation" or "No union," the ballot will be counted for purposes of participation, but will be tabulated as void; the voter would thus cast a ballot against the very position he seeks to support.

Therefore, it is by the Court this 10th day of May, 1963,

ORDERED That the above sentence be and the same is hereby deleted from said memorandum.

/s/ LUTHER W. YOUNGDAHL
Judge

Memorandum

On May 3, 1963, this Court granted a preliminary injunction enjoining the defendant National Mediation Board from conducting any election among the "Clerical, Office, Stores, Fleet ad Passenger Service employees" of United Air Lines, Inc., in which the form of the ballot does not permit a voting employee to cast a vote against collective bargaining representation. On the same date, this Court also ordered that the defendant have until May 10, 1963, to show why the preliminary injunction above granted should not be made permanent.

On May 10, 1963, the defendant filed a motion to dismiss the complaint, or in the alternative for summary judgment. On the same date, the defendant filed a response to the order to show cause, requesting the Court to reconsider and vacate the preliminary injunction above granted, or to stay the preliminary injunction and allow the Mediation Board to conduct the proposed election, and opposing the entry of a permanent injunction.

In support of its various motions, the defendant has submitted an affidavit of Francis A. O'Neill, Jr., a member of the National Mediation Board. Mr. O'Neill has repeated the Board's position as to the long-continued use of this form of ballot, and the time and expense involved in the preparation by the Board of a new list of eligible voters. Obviously, neither of these arguments is sufficient to overcome the Court's previous conclusions, stated in its memorandum of May 3, 1963, that the proposed form of ballot is illegal under the Railway Labor Act, 45 U.S.C. § 151 *et seq*, and that plaintiffs, with the balance of convenience in their favor, would be irreparably injured by the holding of the election with an illegal form of ballot.

The only argument of Mr. O'Neill's not already made by the Board, and hence not fully considered by the Court in reaching its conclusion to issue the preliminary injunction, is the following:

> In the opinion of the National Mediation Board any requirement that the ballot used in a representation dispute be changed to provide a space in which the voters can vote for no representation will tend to encourage the parties to a representation dispute to resort to self-help rather than to seek the services of the Board in resolving the representation dispute and will result in strikes and unrest in the industries covered by the Railway Labor Act which would not result were the normal form of ballot used.

Implicit in this argument is the assumption that unions will prefer to strike rather than to ask the National Mediation Board to investigate a representation dispute pursuant to 45 U.S.C. § 152, Ninth, if any election held by the Board in the course of such investigation must be by a ballot on which the voter can express a preference for no collective bargaining representation. Why unions would prefer to strike rather than engage in an election campaign culminating in a ballot on which all alternatives are clearly stated is not clear to the Court. The Board already has a policy of refusing to certify a collective bargaining representative if a majority of the eligible voters fail to return valid ballots. The Court has merely held that the ascertainment of the number of voters who prefer no collective bargaining representation must, under the Railway Labor Act, be by means of ballots on which such preference can be expressed clearly and unambiguously. Such an unambiguous procedure for ascertaining majority will is no more an invitation to strikes or "self-help" than is the Board's own present policy. In any event, if such "self-help" were to impair the Board's important functions, then it would be for the Congress to take such action as it deemed appropriate to change the Railway Labor Act.

The Board has made the further argument that the issue of whether the Railway Labor Act's provisions for ma-

jority determination of representation disputes requires a ballot on which a voter can express a preference against any such representation, is a matter properly left to the expertise of the Board, even though a question of statutory construction is obviously involved. *Panama Canal Co.* v. *Grace Line, Inc.*, 356 U.S. 309 (1958), upon which the Board relies for this argument, is not in point. There the dispute concerned which of two methods of financial cost accounting was required by a statute which specified neither, and the Supreme Court held that the Canal Company could determine the issue as it thought best, particularly since the President and the Congress had been fully advised of the Canal Company's method of accounting. 356 U.S. at 318-19. "[T]he question is so wide open and at large as to be left at this stage to agency discretion. The matter should be far less cloudy, much more clear for courts to intrude." *Id.* at 319. Here, by contrast with the *Panama Canal Co.* case, the issue of statutory construction goes to the very center of the complicated mediation procedures outlined at length in the Railway Labor Act, with its clear and uncloudy emphasis upon majority determination of the issue of representation. The form of ballot prescribed by the Board is a clear "mistake of law," and judicial review is thus appropriate. *Id.* at 318.

The Board has also cited to the Court certain language from the recent case of *WES Chapter, Flight Eng'rs' Ass'n* v. *National Mediation Bd.*, — U.S. App. D.C. —, 314 F.2d 234 (1962).[1] The language immediately following that

[1] "The need for a large degree of conclusiveness in the settlement of labor disputes over the question of employee representation in the transportation industry was met by Congress in the Railway Labor Act. Responsibility was given to a board with special competence, in the effort to maintain enough harmony to prevent interruption of service. Congress sought to preclude litigation in the courts over what the Supreme Court has called an 'explosive problem.' *Switchmen's Union of North America* v. *National Mediation Board*, 320 U.S. 297, 303 (1943). The Court said Congress had taken 'great pains' to protect the Mediation Board in its handling of the problem. Consequently the courts have seldom intruded. [Citation of cases omitted.]" 314 F.2d at 236.

quoted by the Board, however, is more relevant to the issues now before the Court:

> Where courts have taken jurisdiction of such representation disputes the context has strongly indicated either that the Board by refusing to act had obliterated rights granted to employees by Congress or, turning now to a situation arising under the National Labor Relations Act, the Board had acted in excess of its delegated powers and contrary to a statutory provision which is "clear and mandatory." *Leedom* v. *Kyne*, 358 U.S. 184 (1958). When this occurs the courts "cannot lightly infer that Congress does not intend judicial protection of rights it confers against agency action taken in excess of delegated powers." *Id.* at 190. *WES Chapter, supra,* 314 F.2d at 236.

An election based upon use of the Board's present ballot would obliterate the right to vote for no collective bargaining representation, and would thus be contrary to the clear requirements of the Railway Labor Act's stated policy of majority determination.

Since the above points constitute the only issues raised by the Board in response to the Court's order to show cause why the preliminary injunction should not be made permanent, and since the Board in response to said order to show cause has raised no disputed issue of fact on which a trial would be necessary, the Court will deny the Board's motion to dismiss or in the alternative for summary judgment, and will issue a permanent injunction for the reasons set forth in this memorandum and in the memorandum of May 3, 1963.[2]

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[2] In reaching this conclusion, the positions advanced by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, which union has been permitted to intervene in this action pursuant to Rule 24(b), Fed. R. Civ. P., have been fully considered but have not been separately stated since they repeat, in summary form, issues fully argued by the Board and disposed of by the Court in its memorandum of May 3, 1963.

This memorandum shall be considered as specific findings of fact and conclusions of law, supplemental to the findings of fact, conclusions of law, and memorandum of May 3, 1963, which findings, conclusions, and memorandum of May 3, 1963 are hereby readopted by the Court.

/s/ LUTHER W. YOUNGDAHL
Judge

May 29, 1963

Order

The National Mediation Board having filed a motion requesting the Court to reconsider and vacate the preliminary injunction granted on May 3, 1963, or to stay the preliminary injunction and allow the Mediation Board to conduct the proposed election, or to dismiss the complaint or to grant summary judgment for the defendant thereon, and the plaintiff having requested that the said preliminary injunction be made final, and the parties having filed memoranda which have been fully considered by the Court, it is by the Court this 29th day of May, 1963, for the reasons set forth in its Findings of Fact, Conclusions of Law, and Memorandum filed on May 3, 1963, and for further reasons set forth in its memorandum filed today,

ORDERED That defendant Board's motions be and the same are hereby denied, and it is

FURTHER ORDERED That the preliminary injunction heretofore granted on May 3, 1963, be and the same is hereby made final, and it is

FURTHER ORDERED That the Board is hereby permanently enjoined from conducting any election among the "Clerical, Office, Stores, Fleet and Passenger Service employees" of United Air Lines, Inc., in which the form of the ballot does not permit a voting employee to cast a vote against collective bargaining representation, and it is

FURTHER ORDERED That the plaintiff's request that the Board shall conduct a hearing relating to the question of the appropriateness of class or craft of employees among whom the election was to be held, at which hearing the plaintiff could be heard as a party in interest, shall be and the same is hereby remanded to the Board for further consideration in the light of the Court's conclusion that the Railway Labor Act, 45 U.S.C. § 151 *et seq* gives employees a right to have a ballot on which they may express a preference for no collective bargaining representation.

/s/ LUTHER W. YOUNGDAHL
Judge

Order

The Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, having filed on May 8, 1963, a motion for leave to intervene as a party defendant, and plaintiff having filed an opposition thereto, it appearing that said applicant for intervention on August 24, 1962, filed with the National Mediation Board an application pursuant to 45 U.S.C. § 152, Ninth, for an investigation of a representation dispute among certain employees of United Airlines, Inc., and it appearing further that said applicant for intervention is one of the two unions whose names appear on the ballot prepared by the National Mediation Board for an election scheduled to be held pursuant to 45 U.S.C. § 152, Ninth, and it appearing further that said applicant's defense and the main action have identical questions of law, it is by the Court this 29th day of May, 1963,

ORDERED That said Brotherhood be and the same is hereby permitted to intervene as a defendant in the above entitled case, pursuant to Rule 24(b), Federal Rules of Civil Procedure.

/s/ LUTHER W. YOUNGDAHL

No. 973-63

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CIVIL ACTION

ASSOCIATION FOR THE BENEFIT OF
NON-CONTRACT EMPLOYEES, *Plaintiff*

VS.

NATIONAL MEDIATION BOARD, et al., *Defendants*
BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES,

Intervening Defendant

Notice of Appeal

Notice is hereby given that the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, intervening defendant, hereby appeals to the United States Court of Appeals for the District of Columbia Circuit from the final judgment entered in this action on May 29, 1963.

MILTON KRAMER
1625 K Street, N. W.
Washington 6, D. C.

JAMES L. HIGHSAW, JR.
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Washington 5, D. C.

Attorneys for Intervening Defendant

CIVIL No. 973-63

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

ASSOCIATION FOR THE BENEFIT OF NON-CONTRACT EMPLOYEES, *Plaintiff*

vs.

NATIONAL MEDIATION BOARD, et al., *Defendants*

Notice of Appeal

Notice is hereby given this 26th day of July, 1963, that the National Mediation Board; Leverett Edwards, Francis A. O'Neil, Jr., and Howard G. Gamser, hereby appeal to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 29th day of May, 1963, in favor of the plaintiffs against said defendants, making permanent the preliminary injunction granted in this cause on May 3, 1963.

/s/ HOWARD SHAPIRO
Attorney for Defendants

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[fol. 175]

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,777

UNITED AIR LINES, INC., Appellant,

v.

NATIONAL MEDIATION BOARD, et al., Appellees.

No. 18,068

NATIONAL MEDIATION BOARD, et al., Appellants,

v.

ASSOCIATION FOR THE BENEFIT OF NON-CONTRACT EMPLOYEES, Appellee.

No. 18,072

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES, Appellant,

v.

ASSOCIATION FOR THE BENEFIT OF NON-CONTRACT EMPLOYEES, Appellee.

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[fol. 176] Mr. Stuart Bernstein, with whom Mr. James Francis Reilly was on the brief, for appellant in No. 17,777.

Mr. Milton Kramer, with whom Mr. James L. Highsaw, Jr., was on the brief, for appellant in No. 18,072.

Mr. Howard E. Shapiro, Attorney, Department of Justice, with whom Assistant Attorney General Douglas, Messrs. David S. Acheson, United States Attorney, and Morton Hollander, Attorney, Department of Justice, were on the brief, for appellees in No. 17,777 and for appellants in No. 18,068.

Mr. Alex L. Arguello, of the bar of the Supreme Court of California, pro hac vice, by special leave of court, with whom Mr. Jerome C. Muys was on the brief, for appellee in No. 18,068 and No. 18,072. Mr. David Booth Beers also entered an appearance for appellee in No. 18,068 and No. 18,072.

Mr. John E. Stephen filed a brief on behalf of Air Transport Association of America, as amicus curiae, urging reversal on No. 17,777.

Mr. William G. Mahoney filed a brief on behalf of Railway Labor Executives' Association, as amicus curiae, uring affirmance in No. 17,777.

OPINION—Decided March 12, 1964

Before WILBUR K. MILLER, BASTIAN and WRIGHT, Circuit Judges.

PER CURIAM: These three appeals have been consolidated by this court. In our view Nos. 18,068 and 18,072 should be disposed of first, although they are later in their numbering.

In No. 18,068, the National Mediation Board appeals from an order issued by the District Court which, among other things, restrains the Board from conducting a representation election.

[fol. 177] In No. 18,072, the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes appeals from the same order.

The order appealed from is as follows:

> ". . . ORDERED That the Board is hereby permanently enjoined from conducting any election among the 'Clerical, Office, Stores, Fleet and Passenger Service employees' of United Air Lines, Inc., in which the

form of the ballot does not permit a voting employee to cast a vote against collective bargaining representation, and it is

"FURTHER ORDERED That the plaintiff's request that the Board shall conduct a hearing relating to the question of the appropriateness of class or craft of employees among whom the election was to be held, at which hearing the plaintiff could be heard as a party in interest, shall be and the same is hereby remanded to the Board for further consideration in the light of the Court's conclusion that the Railway Labor Act, 45 U.S.C. § 151 et seq. gives employees a right to have a ballot on which they may express a preference for no collective bargaining representation."

The opinion of Judge Youngdahl, of the District Court, is found in 218 F.Supp. 114 (1963) and is adopted by us as the opinion of this court. It follows that the judgment of the District Court in these cases must be affirmed.

In No. 17,777, United Air Lines, Inc. appeals from the dismissal by the District Court of its action filed to enjoin the election proposed by the National Mediation Board. The grounds for dismissal of the action are not stated in the court's order but, as one of the grounds urged was lack of standing on the part of United Air Lines, we assume it was on this ground that the suit was dismissed. The close question as to United's standing, about which there is a dearth of authority, causes us concern. We have decided, however, not to disturb the Dis- [fol. 178] trict Court's dismissal, because our decision in the other two cases affords the relief concerning the form of the ballot which United sought.

No. 18,068 is affirmed.

No. 18,072 is affirmed.

No. 17,777 is affirmed.

WRIGHT, Circuit Judge, concurring in part and dissenting in part: In No. 17,777 of this consolidated litigation, United Air Lines appeals from the District Court's refusal to enjoin the National Mediation Board from conducting a representation election under Section 2, Ninth, of the Railway Labor Act. 48 Stat. 1188, 45 U.S.C. § 152, Ninth. In Nos. 18,068 and 18,072, the National Mediation Board and the Brotherhood of Railway and Steamship Clerks appeal from the granting of an injunction against the Board, by the same court through a different judge, restraining it from conducting the same election which is the subject of the United Air Lines suit. The second injunction action was brought[1] by certain employees of United Air Lines who claim to want to represent themselves *individually* in their labor negotiations with their employer. I agree with the court that in No. 17,777 the United Air Lines injunction proceeding was properly dismissed by the District Court. I respectfully dissent from its affirmance in Nos. 18,068 and 18,072 upholding the issuance of the injunction against the National Mediation Board.

Since the United Air Lines suit and the action brought by some of its employees appear to have a common inspiration as well as common issues, I shall treat them to-
[fol. 179] gether. Both United and its appellee employees, here called ABNE,[2] urge two grounds for enjoining the Board from performing its duty under the Act: (1) The Board improperly determined the bargaining unit craft or class to be "clerical, office, stores, fleet and passenger service employees"; and (2) the Board proposes to use in the election a form of ballot which does not provide a space for the employee to vote against representation.

The craft or class recognized by the Board as the proper bargaining unit for the proposed election is the same as that recognized in its 1947 proceeding. Case No. R-1706, Determinations of Craft or Class of the National Mediation Board (1947). There has been no change in the classification since that time. After considering the

[1] The employees' action was brought after United Air Lines' application for an injunction was denied.

[2] Association for the Benefit of Non-Contract Employees.

representations by United as to the need for change, the Board determined that it would follow its prior ruling. Thus United and ABNE would have the court reweigh these class considerations and substitute its judgment for the Board's.

With reference to the form of ballot, space is provided to vote for either of the competing unions.[3] A third blank space is indicated for voting for a representative not named on the ballot. That same blank space may be used for voting for "no union" or "no representation." Section 2, Fourth,[4] of the Railway Labor Act provides, in part: "The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act." Thus, if a majority of the craft or class actually votes for representation, a representative may be selected. [fol. 180] If a majority fails to vote, the Board may not certify a representative. *Radio Officers' Union* v. *National Mediation Board,* 86 U.S. App. D.C. 319, 181 F.2d 801 (1950). In addition, the admitted practice of the Board is to add the number voting "no union" to the number not voting in determining whether a majority of the employees eligible to vote actually voted for representation.

The District Court's action enjoining the Board from conducting the election here is in the teeth of a host of cases from the Supreme Court, from this court, and from the Circuit Courts around the country. In the interest of economy, I shall simply list *seriatim* the reasons why this injunction should not have been issued and briefly comment on each.

1. The District Court was without jurisdiction to enjoin the National Mediation Board from conducting an election to resolve the representation dispute at United Air Lines. *Switchmen's Union* v. *National Mediation Board,* 320 U.S. 297 (1943). In upholding the action of the Board

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[3] The two competing unions shown on the ballot were the Brotherhood of Railway and Steamship Clerks and the International Association of Machinists.

[4] 48 Stat. 1187, 45 U.S.C. § 152, Fourth.

against union attack, the Court in *Switchmen's Union* said, "* * * if Congress had desired to implicate the federal judiciary and to place on the federal courts the burden of having the final say *on any aspect* of the problem, it would have made its desire plain." 320 U.S. at 303. (Emphasis added.) Unlike the National Labor Relations Act,[5] the Railway Labor Act has no provision for judicial review. *Switchmen's Union* was reinforced by three other cases[6] handed down by the Supreme Court [fol. 181] at the same term, and the force of these decisions has continued, unmodified by Congress, down to the present day.[7]

2. The ballot which the District Court has ordered changed before an election can be conducted has been used by the Board and its predecessor, the Railway Labor Board, since 1921 in over 3,400 elections. In the 43 years since 1921, Congress has not indicated the slightest

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[5] 49 Stat. 453, 29 U.S.C. § 159(d).

[6] *General Committee of Adjustment* v. *Missouri-Kansas-Texas R. Co.*, 320 U.S. 323 (1943); *General Committee of Adjustment* v. *Southern Pacific Co.*, 320 U.S. 338 (1943); and *Brotherhood of Railway & Steamship Clerks, etc.* v. *United Transport Service Employees*, 320 U.S. 715 (1943) (*per curiam*).

[7] *Order of Railway Conductors* v. *National Mediation Bd.*, 79 U.S.App.D.C. 1, 141 F.2d 366, *cert. dismissed*, 323 U.S. 166 (1944); *Radio Officers' Union* v. *National Mediation Board*, *supra*; *Rutas Aereas Nacionales, S.A.* v. *Edwards*, 100 U.S.App.D.C. 366, 244 F.2d 784 (1957); *Decker* v. *Venezolana*, 103 U.S.App.D.C. 301, 258 F.2d 153 (1958); *Air Line Stewards & Stewardesses Ass'n* v. *National Mediation Board*, 111 U.S.App.D.C. 126, 294 F.2d 910 (1961), *cert. denied*, 369 U.S. 810 (1962); *UNA Chapter, Flight Eng. I. Ass'n* v. *National Mediation Bd.*, 111 U.S.App.D.C. 121, 294 F.2d 905 (1961), *cert. denied*, 368 U.S. 956 (1962); *WES Chapter, Flight Eng. Int. Ass'n* v. *National Mediation Bd.*, 114 U.S.App.D.C. 229, 314 F.2d 234 (1962). Among decisions from other courts are *Brotherhood of Ry. & S. Clerks, etc.* v. *Virginian Ry. Co.*, 4 Cir., 125 F.2d 853 (1942); *Rose* v. *Brotherhood of Railway and Steamships Clks.*, 4 Cir., 181 F.2d 944, *cert. denied*, 340 U.S. 851 (1950); *Flight Engineers' Inter. Ass'n* v. *Eastern Air Lines, Inc.*, 2 Cir., 311 F.2d 745, *cert. denied*, 373 U.S. 924 (1963); *Ruby* v. *American Airlines, Inc.*, 2 Cir., 323 F.2d 248 (1963), *cert. pending*.

disapproval of the Board's election machinery—including its ballot. Moreover, no court, except the District Court here,[8] in the ABNE case but *not* in the United case, has found this ballot unlawful.[9] And this court has approved its use as a proper exercise of the Board's discretion within the intendment of the Act. *Decker* v. *Venezolana, supra* Note 7 (see briefs).[10]

[fol. 182] 3. The Board's craft or class determination is unreviewable. This court has so held in at least four cases, one at the last term of court. *WES Chapter, Flight Eng. Int. Ass'n* v. *National Mediation Bd., supra* Note 7; *Air Line Stewards & Stewardesses Ass'n* v. *National Mediation Board, supra* Note 7; *UNA Chapter, Flight Eng. I. Ass'n* v. *National Mediation Bd., supra* Note 7; *Radio Officers' Union* v. *National Mediation Board, supra.* The Fourth Circuit, in *Rose* v. *Brotherhood of Railway and Steamship Clks., supra* Note 7, 181 F.2d at 946, summed it up well:

> "In the light of the decisions of the Supreme Court, there can be no doubt that the effect of this statute

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[8] The ABNE and United Cases were heard by different District Court judges.

[9] But *cf. McNulty* v. *National Mediation Board,* N.D.N.Y., 18 F.Supp. 494 (1936).

[10] The *Decker* case involved the jurisdiction of the District Court to review the action of the Mediation Board. Paragraph 8 of the amended complaint there raised the same issue which is raised here:

> "[Due process was denied] in that the ballot used in the election had no space on it for a vote to the effect that the employee did not want anyone, defendant I.A.M. or anyone else, to represent him."

That issue was preserved on appeal, in paragraph 1b of the Questions Presented:

> "* * * the right to [due process] was denied by use of a ballot which gave no way to vote against representation by any bargaining agent."

Affirming the dismissal of the complaint, this court stated, "We hold that the prohibition of the Switchmen's case applies in the circumstances of this case." 103 U.S.App.D.C. at 302, 258 F.2d at 154.

was to vest in the Mediation Board exclusive jurisdiction over the *certification of bargaining agents, the determination of bargaining units and the classification of employees for the purposes of bargaining.* And it is equally clear that the *exercise of discretion by the board with respect to such matters is not subject to review by the courts.* * * * " (Emphasis added.)

4. United Air Lines lacks standing to challenge the [fol. 183] Board's action. The purpose of the Railway Labor Act is to guarantee employees complete freedom to organize—freedom from employer interference. This Act was passed, as the Government asserts, "to put an end to the harmful consequences of * * *, individual dealing between large carriers and small employees. *Machinists* v. *Street,* 367 U.S. 740, 760; *Virginian Ry.* v. *Federation,* 300 U.S. 515, 553; *Texas & N.O. R. Co.* v. *Brotherhood of Railway and Steamship Clerks,* 281 U.S. 548, 570." United's obligation under the Act is *not "to interfere in any way with the organization of its employees."* Railway Labor Act, § 2, Fourth. (Emphasis added.) And this obligation includes refraining from filing, or inspiring, litigation designed to block or delay representation elections conducted by the National Mediation Board.

5. There is no *Leedom* v. *Kyne,* 358 U.S. 184 (1958), question here. It is not even suggested that the Board has acted contrary to a plainly and expressly defined statutory duty, nor has the Board here conceded that it has so acted, as in *Leedom.* This principle has been expounded recently by this court in a series of cases so there should be no doubt about its application. *WES Chapter, Flight Eng. Int. Ass'n* v. *National Mediation Bd., supra* Note 7; *Air Line Stewards & Stewardesses Ass'n* v. *National Mediation Board, supra* Note 7; *UNA Chapter, Flight Eng. I. Ass'n* v. *National Mediation Bd., supra* Note 7. In the *UNA* case we said (111 U.S.App.D.C. at 124, 294 F.2d at 908):

"Appellant urges, however, that jurisdiction exists under the Supreme Court's decision in Leedom v. Kyne, 1958, 358 U.S. 184, 79 S.Ct. 180, 3 L.Ed.2d 210.

We cannot agree. In Leedom the Supreme Court carefully differentiated Switchmen's Union from the case before it, pointing out that the latter did not involve 'review' of agency action, but the striking down of action *in excess of delegated powers, in flat violation of the controlling statute*—there the Labor Man-
[fol. 184] agement Relations Act, 29 U.S.C.A. § 141 et seq. See 358 U.S. at pages 188-190, 79 S.Ct. at pages 183-184. It should be noted, also, that in Leedom v. Kyne the National Labor Relations Board *did not deny* that it had contravened its governing statute. See 358 U.S. at page 187, 79 S.Ct. at page 183. No such admission is made here, and appellant has not pointed out any clear statutory limitation expressed by the Railway Labor Act which has been violated by the NMB. * * * " (Emphasis added.)

6. There is a demonstrable lack of equity in the application for the injunction against holding the election. ABNE, the no-contract employees' group, claims it represents more than half of the employees eligible to vote in the election. If so, its remedy is to tell its members either not to vote or to vote for no representation. As shown, if its membership complies with these instructions, there will not be a majority voting for representation and, consequently, no representative will be certified. As indicated during oral argument, this was precisely the result of the voting—or not voting—in the representation election held recently at Lake Central Airlines. No irreparable injury is shown, therefore, if the election here is conducted as ordered by the Board.

This litigation is a throwback to the early days of the 1900's when federal courts were used to deliver individual workmen unrepresented to the bargaining table of their employer. See, *e.g., Adair* v. *United States,* 208 U.S. 161 (1908); *Adkins* v. *Children's Hospital,* 261 U.S. 525 (1923). I thought those days were over.

I regret my inability to agree with my distinguished brethren in respect to this litigation. Respectfully I dissent from the court's ruling upholding this injunction.

[fol. 185] [File endorsement omitted]

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Civil 402-63

No. 17,777

UNITED AIR LINES, INC., Appellant,

v.

NATIONAL MEDIATION BOARD, et al., Appellees.

Civil 973-63

No. 18,068

NATIONAL MEDIATION BOARD, et al., Appellants,

v.

ASSOCIATION FOR THE BENEFIT OF NON-CONTRACT EMPLOYEES, Appellee.

Civil 973-63

No. 18,072

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES, Appellant,

v.

ASSOCIATION FOR THE BENEFIT OF NON-CONTRACT EMPLOYEES, Appellee.

Appeals from the United States District Court for the District of Columbia.

Before: Wilbur K. Miller, Bastian and Wright, Circuit Judges.

JUDGMENT—March 12, 1964

These cases came on to be heard on the records on appeals from the United States District Court for the District of Columbia, and were argued by counsel.

On Consideration Whereof, it is ordered and adjudged by this court:

(1) that the judgment of the District Court on appeal in cases Nos. 18,068 and 18,072 is hereby affirmed; and

(2) that the judgment of the District Court on appeal in case No. 17,777 is also affirmed.

Per Curiam.

Dated: March 12, 1964.

Separate opinion by Circuit Judge Wright concurring in affirmance in case No. 17,777 and dissenting from affirmance in cases Nos. 18,068 and 18,072.

[fol. 188] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 189]

SUPREME COURT OF THE UNITED STATES

No. ———, October Term, 1963

NATIONAL MEDIATION BOARD, et al., Petitioners,

vs.

ASSOCIATION FOR THE BENEFIT OF NON-CONTRACT EMPLOYEES.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—June 10, 1964

Upon Consideration of the application of counsel for petitioner(s),

It Is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including July 10th, 1964.

Earl Warren, Chief Justice of the United States.

Dated this 10th day of June, 1964.

[fol. 190]

SUPREME COURT OF THE UNITED STATES

No. ———, October Term, 1964

NATIONAL MEDIATION BOARD, et al., Petitioners,

vs.

ASSOCIATION FOR THE BENEFIT OF NON-CONTRACT EMPLOYEES.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—June 29, 1964

Upon Consideration of the application of counsel for petitioner(s),

It Is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, further extended to and including August 10th, 1964.

Earl Warren, Chief Justice of the United States.

Dated this 29th day of June, 1964.

[fol. 191]

SUPREME COURT OF THE UNITED STATES

No. 138, October Term, 1964

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES, Petitioner,

vs.

ASSOCIATION FOR THE BENEFIT OF NON-CONTRACT EMPLOYEES.

ORDER ALLOWING CERTIORARI—October 12, 1964

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted. The case is consolidated with Nos. 139 and 369 and a total of two hours is allotted for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 192]

SUPREME COURT OF THE UNITED STATES

No. 369, October Term, 1964

NATIONAL MEDIATION BOARD, et al., Petitioners,

vs.

ASSOCIATION FOR THE BENEFIT OF NON-CONTRACT EMPLOYEES.

ORDER ALLOWING CERTIORARI—October 12, 1964

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted. The case is consolidated with Nos. 138 and 139 and a total of two hours is allotted for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.